



# THE CORPORATE ASSAULT ON HONDURAS

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Mafia-style investments and  
the Honduran people's struggle  
for democracy and dignity



Institute for  
Policy Studies

Honduras  
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# Index

<b>Executive Summary</b>	<b>7</b>
<b>Introduction</b>	<b>9</b>
<b>1. Methodology and framework for analyzing mafia-style investments</b>	<b>12</b>
1.1. Sources for Data Collection	12
1.2. Conceptual framework	12
<b>2. Deepening of neoliberalism and emergence of the narco-state</b>	<b>14</b>
2.1. Construction and deepening of neoliberalism	14
2.2. Changes after the coup d'état	23
2.2.1. Law for the Promotion of Public-Private Partnerships (2010)	25
2.2.2. Energy sector reform package (2010-2014)	27
2.2.2.1. Massive approval of solar energy contracts	29
2.2.3 Reforms to facilitate ZEDEs (2012 to 2013)	31
<b>3. Extraordinary privileges for investors: Four legal instruments used against the Honduran people</b>	<b>38</b>
3.1. Investor-State Dispute Settlement Mechanism (ISDS)	41
3.1.1. First legal instrument: bilateral investment treaties	44
3.1.2. Second legal instrument: free trade agreements	45
3.1.2.1. CAFTA-DR and implementing legislation	47
3.1.2.2. Resistance to CAFTA-DR	48
3.1.2.3. The Central America-Panama Free Trade Agreement: A tool of the elites	50
3.1.3. Third legal instrument: Law for the Promotion and Protection of Investments	52
3.1.4. Fourth legal instrument: Contracts	53
<b>4. Supranational arbitration claims and mafia-style investments in Honduras</b>	<b>55</b>
4.1. Legal basis, origins and economic sectors of claims	55
4.1.1. Treaty claims	56
4.1.2. Claims based on contracts and the Law for the Promotion and Protection of Investments	56
4.1.3. Origins of investors making claims	57
4.1.4. Economic sectors in which claims are registered	59

4.2. Early claims	60
4.2.1. Astaldi: unfinished works and disregard of the minimum wage	60
4.2.2. Elsamex: Hurricane Mitch and road failures	62
4.2.3. Gabourel Family Trust: direct expropriation of land	63
4.3. Mafia-style investments and claims in the post-coup era	64
4.3.1. Rosenthal lawsuit and disputes within the narco-state	65
4.3.2. ZEDE Próspera's claim: flagrant transfer of sovereignty	69
4.3.2.1. New ZEDE legislation	69
4.3.2.2. Próspera's ZEDE claim at ICSID	70
4.3.2.3. Próspera's hidden intentions	72
4.3.2.4. Resistance and opposition to ZEDEs	74
4.3.2.5. Debate on the legal and factual existence of ZEDEs	78
4.3.3. Claims over the renegotiation of electricity contracts	80
4.3.3.1. Claim from Scatec ASA, Norfund and KLP Norfund Investments AS	81
4.3.3.2. Claim from Inversiones y Desarrollos Energéticos, S.A.	87
4.3.3.3. Claim from Fernando Paiz Andrade and Anabella Schloesser de León de Paiz	88
4.3.3.4. Claim from Eléctricas de Medellín Ingeniería y Servicios S.A.S.	89
4.3.3.5. Claim from X-Elio Energy S.L.	93
4.3.3.6. Claim from Victor Miguel Silhy Zacarías	93
4.3.4. Claims over Public-Private Partnerships: irregularities and costs to the State	94
4.3.4.1. Claim from Autopistas del Atlántico and others	94
4.3.4.2. Claim from Palmerola International Airport	100
4.3.4.3. Claims from International Container Terminal Services & Operadora Portuaria Centroamericana	102
4.3.5. Claim from Argüello brothers and the community Los Castaños of Choloma	103
4.3.5.1. The investors	104
4.3.5.2. The deceptions	106
4.3.6. Claim from JLL Capital: influence peddling and punishment for the people	109
4.4. The chilling effect in evidence	110
4.4.1. Chilling effect of ZEDE claims	111
4.4.2. Chilling effect of energy sector demands	111
4.4.3. Chilling effect of mining sector demands	112

4.5. Conclusions on mafia-style demands	117
4.5.1. The investment protection system: justice for corporations, not people.	118
4.5.2. Mafia-style demands	119
<b>5. Exiting from the transnational investment protection system</b>	<b>122</b>
5.1. Successful strategies to revise the system	122
5.1.1. Ecuador: Comprehensive Audit Commission on Investment Treaties and the Arbitration System	123
5.1.2. South Africa: termination of BITs	123
5.1.3. Brazil and India: development of their own treaty model	124
5.1.4 El Salvador: modification or revocation of the National Investment Law and transparency regarding claims	125
5.2 Recommendations for a sovereign future without ISDS	127
<b>Table: Investor-state arbitration claims against Honduras</b>	<b>130</b>
<b>List of acronyms</b>	<b>133</b>

## Executive Summary

- Between 2023 and 2024, Honduras was the recipient of 14 international arbitration claims, making it the second most sued country in Latin America over that period (after Mexico). All of these lawsuits have been filed at the International Centre for Settlement of Investment Disputes (ICSID), which is part of the World Bank. Of the claims, four were filed in August 2024 alone - the same month in which the departure of Honduras from ICSID, announced by the Government of Xiomara Castro in February 2024, became official.
- Honduras has four legal avenues that allow foreign investors to sue the State: eight bilateral investment treaties (BITs), twelve free trade agreements (FTAs - including the Free Trade Agreement between the United States, Central America and the Dominican Republic known as CAFTA-DR), the Law for the Promotion and Protection of Investments of 2011, and contracts entered into by the State with foreign and domestic investors.
- Since 1999, Honduras has faced a total of 19 such lawsuits, 15 of which are still pending; three were settled in favor of the investor and one was settled outside of arbitration. On ten occasions the sources of the claims have been BITs and FTAs, in three instances they have come via the National Investment Law, and six times via contracts. In nine of the 19 claims, the investors are advised by the U.S. law firm White & Case.
- We resort to the term “mafia-style” to describe these lawsuits since most of them are by companies whose investments were made in an irregular manner during the period known as the narco-dictatorship in Honduras, after the 2009 coup d'état. In general, they have been plagued by irregularities and corrupt administration, were imposed against the will of local populations or harmful to the public interest, and were carried out in the context of the repressive government of Juan Orlando Hernandez (2014-2022). In many instances, investors have had direct or indirect links to criminal networks.
- The most expensive claim against Honduras has been filed in an attempt to contain the current administration's efforts to dismantle the regulatory framework of the Employment and Economic Development Zones (ZEDE) that was introduced

following the coup d'état. U.S.-based consortium Próspera is claiming \$10.775 billion, equivalent to almost three times the approved Public Investment Plan for Honduras for 2024.

- Seven claims have been filed against the Honduran government's efforts to renegotiate contracts on the cost of electricity and as part of efforts to rescue the National Electricity Company (ENEE). Five of these investors alone are demanding nearly US\$1.3 billion from Honduras.
- At least three claims have been filed based on Public-Private Partnership contracts, including one of the cases in the energy sector. The known amount claimed in the other two claims totals US\$190 million and refer to contracts negotiated under conditions highly detrimental to the public treasury.
- More than a third of the claims filed since 2023 correspond to investments that have generated resistance from the most affected populations, beginning with the community resistance aroused by the ZEDEs (such as in Crawfish Rock on the island of Roatán, as well as at the national level due to their significance for the entire country). There has also been persistent community resistance against the Los Prados solar energy project of Norwegian investors Scatec, Norfund and KLP; protests in response to electricity distribution and the collection of payments by Empresa Energía Honduras (EEH); an uprising for 421 days by residents of San Pedro Sula and El Progreso against toll booth payments on local highways; and the struggle of residents of the gated community known as "Los Castaños de Choloma" to take control of the administration of their lives and homes.
- The potential cost to the country of these claims is economic but also political, given that they look to have a "deterrent effect" on regulations and public policies and to, for example, slow down efforts by the current government administration to dismantle the legal concept of the ZEDE, to rescue the National Electric Energy Company, and to retake control of airport infrastructure. These lawsuits also create an obstacle for the Honduran government to provide an effective response to the demands of affected communities who reject the energy and mining projects that threaten them.
- Being part of ICSID is not necessary to promote foreign investment. The decision of the Government of Honduras to leave ICSID is a good first step, but it is not enough. It is important to move forward on reviewing trade treaties, investment protection treaties, the 2011 Investment Law, as well as all contracts that include arbitration.

## Introduction

Honduras has received a total of 19 international arbitration claims from foreign and domestic investors. Up to 2018 the country had seen only five such lawsuits. But 2023 saw an escalation and, in that year alone, it was slapped with nine claims -- the most filed that year against a Latin American country, after Mexico. Another five were added to that in 2024. This new wave is concerning, coming just as the country struggles to recover from twelve years of crisis initiated by the 2009 coup d'état and continuing during the narco-dictatorship led by former President and convicted drug trafficker Juan Orlando Hernández (JOH), who remained in power from 2014 to 2022.

The 2009 coup d'état against President Manuel Zelaya Rosales, supported by the governments of the United States and Canada, was marked by the deepening of the unjust global neoliberal economic model in Honduras. Immediately, under the framework of the 2010-2022 National Plan, a series of interrelated legislative policies functional to that economic model were introduced – such as the Law for the Promotion of Public-Private Partnership (2010); a package of laws further privatizing the generation and distribution of electric power (2010-2014); as well as the Organic Law for Employment and Economic Development Zones (ZEDE Law, 2013).

In the 1990s, Honduras had begun to sign free trade agreements (FTAs) and bilateral investment treaties (BITs). This created an investment-friendly national framework that served as the basis for post-coup governments to, at the same time as signing new treaties, launch campaigns to attract international investment. Such was the case with the conference 'Honduras Is Open for Business', which we will come back to at various points as an infamous strategy for selling off and surrendering the country that needs to be examined. At this event, the Law for the Promotion and Protection of Investments (2011) was announced. This law went beyond FTAs and BITs to include any foreign investor and grant them extraordinary privileges, regardless of their country of origin or whether or not they had a specific treaty with Honduras.

Taking advantage of these reforms, international and national capital interested in profiting from financial, mining, energy generation and infrastructure projects turned their eyes and chequebooks to Honduras. The people behind this capital ignored a significant and unavoidable fact: the social rejection and opposition to the post-coup

governments, and the imposition of a narco-state in Honduras that was promoting extractive, corrupt and irregular investments in the country.

Resistance to corrupt governments, extractivism and transnational capital certainly did not arise in Honduras only after the 2009 coup. In fact, since the 1990s Honduran groups such as national coalitions, indigenous organizations, food sovereignty movements, trade unions, and various agricultural and peasant movements have opposed FTAs – such as the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) – and their negative impacts. However, following the coup d'état, the Honduran people were involved in a resurgence of widespread opposition to the exploitative behaviors of the national elite, backed as it was by the U.S., Canada, international financial institutions and transnational capital. Hondurans were aware that these entities, instead of developing the country for the betterment of all, sought to extract profits for themselves, dispossess and evict communities from their land, and privatize water services, rivers, energy generation and social programs.

The avalanche of lawsuits that are the subject of analysis in this study takes place squarely within the framework of this unjust global economic order that has deepened its roots not only in Honduras, but across Latin America, since the 1990s. The purpose of this report is to understand this avalanche of arbitration claims against Honduras in the post-coup political, social and economic context, to examine the legal mechanisms that make possible this assault on the democracy and dignity of the Honduran people, and to consider the challenge of undoing the tentacles of narco-dictatorship and neoliberalism.

We argue that the fifteen active claims against Honduras are mafia-style. We use the term to express the illegitimacy of post-coup investments in the context of a narco-state that involved doing business, in one way or another, with actors linked to criminal networks. Furthermore, for us, this term 'mafia-style' is sufficient to also encompass the concept of "odious debt", a concept within international law and the public debt justice movement which argues that peoples should not assume debts acquired under authoritarian, repressive and corrupt regimes.

The report begins by describing our methodology and the analytical framework put in place that resulted in labelling these post-coup investments as “mafia-style”. The second section outlines the deepening of Honduras’ neoliberal model, essentially describing the relevant legislation that was passed after the coup. The third section provides an overview of the four legal instruments that investors can use to sue Honduras, that is, FTAs, BITs, the Law for the Promotion and Protection of Investments, and contracts. Fourthly, the report describes the political and social context of each of the 15 active lawsuits against Honduras and details how and why they should be characterized as mafia-style. The fifth section explains how Honduras can deal with current and future attempts by investors to sue the country, including what can be learned from other countries with similar experiences in Latin American region. Finally, this report presents some conclusions and recommendations.



Protest against the government of Juan Orlando Hernández. Source: Radio Progreso

# **1. Methodology and framework for analyzing mafia-style investments**

## **1.1. Sources for data collection**

The primary basis for this study is approximately twenty-five group meetings and interviews with community organizations, civil society groups, human rights entities and experts, and government officials in Honduras. Most of the interviews for this research were conducted via Zoom between May and June 2024 or in person during a trip to Honduras in May 12-25, 2024, to visit and meet with communities affected by the projects and investments analyzed, as well as government officials. The research team's experience includes years of study of the FTA framework, the transnational investor protection system, socio-environmental struggles in Latin America, and the Honduran post-coup context. The review of Honduran and international reports, databases, journals, academic literature and analytical work complements our exchanges with Honduran organizations and individuals.

In addition, the databases of the United Nations Conference on Trade and Development (UNCTAD), the International Centre for Settlement of Investment Disputes (ICSID) and specialized arbitration journals were used to construct data on investor claims against Honduras.

## **1.2. Conceptual framework**

In our analysis, we use the term “mafia-style” to describe investments that are generally plagued by irregularities and corrupt activity; imposed against the will of the people or harmful to the public interest; carried out in the context of a despotic and repressive government; and often with direct or indirect links to criminal networks. In particular, our decision to use the term “mafia-style” is inspired by the level of criminality that took shape after the 2009 coup d'état, a situation that was exploited by international and domestic investors.

To arrive at our concept of “mafia-style”, we borrowed the legal criterion of *odious debts*. These are debts contracted against the interests of a country’s population, often negotiated by a government seeking to strengthen its despotic regime, repress its population and embezzle funds.<sup>1</sup> The term “odious debt” has been used in cases in Nicaragua, the Philippines, Haiti, South Africa, Niger and Iraq, among others, in which governments facing incurred debts have accused former rulers or public officials of looting state funds for personal gain or to restrict freedoms and use violence against their own citizens. In the 1920s, Alexander Sack proposed to qualify a debt as “odious” if it lacks the consent of the people at the time it was contracted, if it does not demonstrate benefit, and if the creditor or lender is in a position to be aware of these points.<sup>2</sup>

Based on the concept of odious debt as meaning illegitimately incurred, we developed our characterization of “mafia-style investments”. Claims against Honduras can be considered “mafia-style” if they meet most of the following criteria:

**Irregular.** The contracts, investment commitments or the nature of the projects that are the subject of the lawsuits did not follow due process because either the creation of the legal framework, or the contracts for each party, did not follow the law.

**Odious.** The investments did not have the consent of the local population and/or do not benefit the Honduran people and were signed in the context of a despotic and oppressive regime. In addition, the creditor or investor is aware of the investment environment and decides to proceed in spite of it.

**Linked to criminal networks.** Investments may be linked to or facilitated by established criminal organizations or individuals coordinated with such networks.

Against this backdrop the report outlines, particularly in section 4, how the investments meet the characteristics of being “mafia-style”.

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1 Howse, R. (July 2007). The concept of odious debt in public international law. *UNCTAD Discussion papers* (85). [https://unctad.org/system/files/official-document/osgd20074\\_en.pdf](https://unctad.org/system/files/official-document/osgd20074_en.pdf)

2 Mandal, S. (2006). *Hateful lending: Debt relief as if morals matter*. New Economics Foundation. <https://neweconomics.org/2006/09/odious-lending>

## **2. Deepening of neoliberalism and emergence of the narco-State**

In this section we describe how the neoliberal economic model took deep root in Honduras. We refer to the relevant legislation passed since 2010, while pointing out the actions of the governments installed after the 2009 coup d'état, with emphasis on the emergence of the narco-state.

### **2.1 Construction and deepening of neoliberalism**

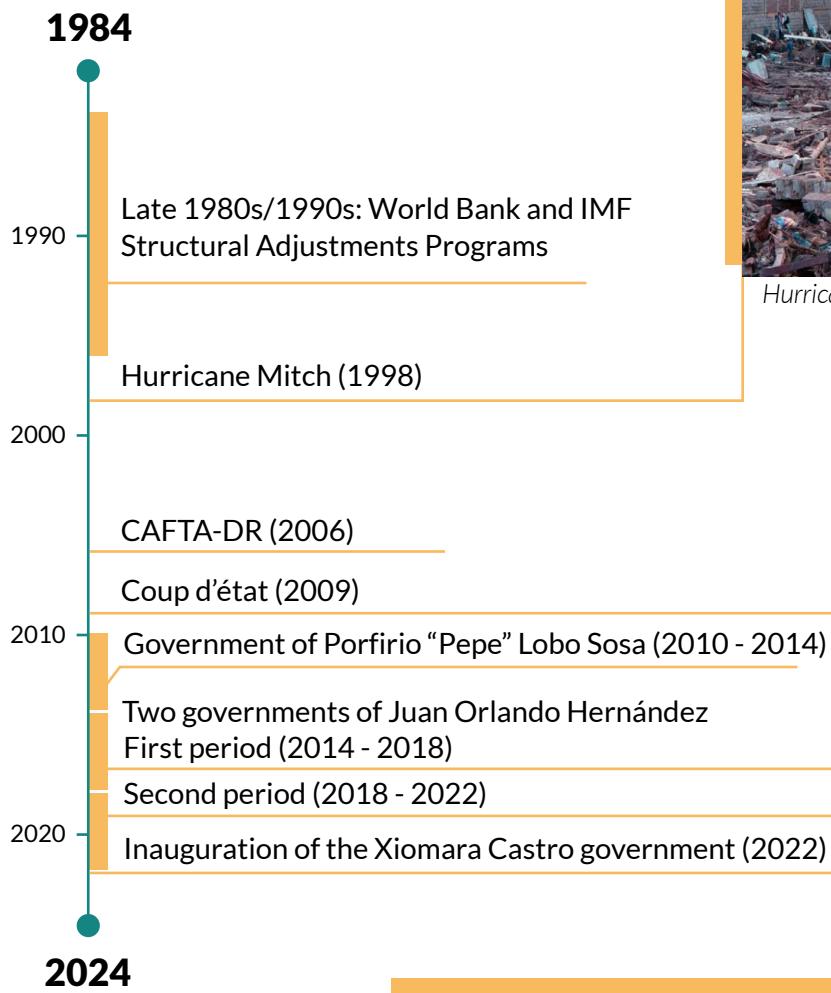
Honduras' economy, based primarily on the export of agricultural products, changed dramatically from the 1990s, when neoliberal governments took power throughout most of Central America. Shortly after the imposition of World Bank (WB) and International Monetary Fund (IMF) structural adjustment programs in the late 1980s and early 1990s,<sup>3</sup> a new economic model emerged in Honduras under the presidency of Rafael Leonardo Callejas (1990 to 1994) with the passage of the Law for the Structural Ordering of the Economy (1990). The legislation promoted the policies outlined by the international financial institutions and the U.S. Treasury known as the Washington Consensus. As in many other countries where the Consensus was also imposed, Honduras devalued its currency, eliminated local protectionism, opened the economy to international investors and increased the costs of public services such as water, electricity and telecommunications, among other policies.

With the dispossession of land in rural areas, following approval of the Law for the Modernization and Development of the Agricultural Sector in 1992 and the signing of several international investment and free trade agreements starting in 1994, Honduras' traditional exports (bananas, sugar, minerals, coffee, etc.) changed significantly. Between 1990 and 2010 they diversified to include industrial products (made in maquiladoras or duty-free factories), tourism, financial services and gold, among others.<sup>4</sup> Free trade and industrial processing zones were established, accompanied by economic incentives such as the elimination of tariffs and tax exemptions for transnational capital. These economic changes translated into profound social transformations.

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3 International Civil Society Network for Participatory Review of Structural Adjustment Policies (2002). *Structural Adjustment Policies at the Roots of Economic Crisis and Poverty: A Multi-National Participatory Assessment of Structural Adjustment*. Saprin. [http://www.saprin.org/SAPRIN\\_Exec\\_Summ\\_Esp.pdf](http://www.saprin.org/SAPRIN_Exec_Summ_Esp.pdf)

4 Central American Institute for Fiscal Studies. (2019) *Fiscal policy: Expression of the power of Central American elites*. ICEFI. [https://mail.icefi.org/sites/default/files/politica\\_fiscal\\_expcion\\_del\\_poder\\_de\\_las\\_elites\\_centroamericanas.pdf](https://mail.icefi.org/sites/default/files/politica_fiscal_expcion_del_poder_de_las_elites_centroamericanas.pdf)



Hurricane Mitch, Source: Radio Progreso



Protest against the coup d'état, Source: Jen Moore



Protest against the government of Juan Orlando Hernández (JOH), Source: Radio Progreso



The repressive contest of the narcodictatorship, Source: Radio Progreso

According to the work of Honduran sociologist Eugenio Sosa, now a public official, one of the major impacts of this period or of the “New Economic Model”, as he calls it, was the establishment of what is now known as the Honduran oligarchy or economic elite and its subsequent economic business groups. These groups and individuals positioned themselves in specific sectors such as maquiladoras, telecommunications, tourism, energy and finance. Today, these families hold enormous control and dominance in Honduras, with a “de facto political veto power over governments,” which not only further perpetuates their dominance, but also fuels corruption and impunity.<sup>5</sup>

### **The most powerful economic groups in Honduras**

Some of the most powerful groups are Grupo Ficohsa and the Atala family; Grupo Financiero Atlántida linked to the Goldstein Rubinstein family; Grupo Terra presided over by Fredy Antonio Nasser; Grupo Intur founded by Eduardo Kafatti; and Corporación Químicas Dinant de Centroamérica created by Miguel Facussé Barjum.

Prior to the seizure of their assets in 2015, the Rosenthal family with their company Grupo Continental was also part of the Honduran elite. It still holds a lot of power in the country.<sup>6</sup>

Almost all of these families and economic groups have registered and/or operate in other Central American countries, including Panama.

In the context of the New Economic Model, powerful de facto illicit actors have placed the state at the service of their interests. Through the financing of political parties and candidates, and with the increased power of oligarchs and the continued expansion of the New Economic Model, the participation of elites, corruption networks and organized

5 Sosa, E. (2017). Transformations in economic elites, state and the process of democratization and de-democratization: The case of Honduras, 1990-2017. *Anuario de Estudios Centroamericanos*, 43 (January-December). [https://www.scielo.sa.cr/scielo.php?script=sci\\_arttext&pid=S2215-41752017000100125#B9](https://www.scielo.sa.cr/scielo.php?script=sci_arttext&pid=S2215-41752017000100125#B9)

6 United States of America vs. Jamie Rolando Rosenthal Oliva, Yani Benjamin Rosenthal Hidalgo, Yankel Rosenthal Coello and Andres Acosta Garcia. S2 13 Cr. 413. Sealed superseding indictment. <https://www.justice.gov/usao-sdny/file/781866/dl>; United States Attorney's Office (December 15, 2017). Former Honduran Congressman And Businessman Sentenced To 36 Months For Money Laundering. <https://www.justice.gov/usao-sdny/pr/former-honduran-congressman-and-businessman-sentenced-36-months-money-laundering>

criminal groups in politics has increased. Cables written by the U.S. government in 2004 and published by WikiLeaks, and cases filed by U.S. prosecutors accusing high-level public officials and some of their family members have made visible links among members of the oligarchy and the political class to drug trafficking activities and corruption networks.<sup>7</sup>

It was in such a context that Manuel “Mel” Zelaya Rosales, of the Liberal Party, won the Honduran presidential elections in 2005, assuming power in 2006. Zelaya, like most Honduran presidents, was part of the oligarchy. However, about halfway through his presidency he made an unexpected political turnaround, and began implementing reforms and changes that benefited Honduras’ poor and sectors that had been traditionally excluded from the political process for decades. Zelaya’s efforts to implement minor reforms posed no real threat to the status quo or the power groups.<sup>8</sup> Nonetheless, the conservative and anti-democratic elite, closely linked to the United States, refused to tolerate the slightest hint of change and overthrew Zelaya in a U.S. and Canadian-backed coup d’état on June 28, 2009.<sup>9</sup> The coup facilitated a further weakening of institutions and democracy in the country, while expanding the historically problematic role and power of the military in public institutions.

In response, international organizations such as the United Nations (UN), the Organization of American States (OAS) and the European Union (EU) publicly denounced the coup. The coup was likewise rejected by the Honduran people during months of protests that were severely repressed by the de facto government. Many indigenous and peasant groups participated in a broad national coalition, the National Front of Popular Resistance (FNRP), which was formed after the coup, knowing that the elites and the coup leaders would implement policies against their interests and undermine territorial and anti-extractivist struggles.

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<sup>7</sup> See: U.S. diplomatic cable released by WikiLeaks: “Drug plane burns on property of prominent Honduran,” submitted by U.S. Political Counselor Francisco L. Palmieri on March 19, 2004, posted at the U.S. Embassy in Tegucigalpa, Honduras. [https://wikileaks.org/plusd/cables/04TEGUCIGALPA672\\_a.html](https://wikileaks.org/plusd/cables/04TEGUCIGALPA672_a.html).

Frank, D. (October 21, 2011). WikiLeaks Honduras: U.S. linked to brutal businessman. *The Nation*. <https://www.thenation.com/article/archive/wikileaks-honduras-us-linked-brutal-businessman/>

Spring, K. (November 5, 2020). The marriage of drug money and neoliberal development in Honduras. *NACLA*, 52(4). <https://www.tandfonline.com/doi/full/10.1080/10714839.2020.1840167>

<sup>8</sup> Sosa, E. Ob. cit.

<sup>9</sup> See: Frank, D. (2018). The long Honduran night: Resistance, terror, and the role of the United States in the aftermath of the coup. *Haymarket Books*, <https://www.haymarketbooks.org/books/1226-the-long-honduran-night>

Shipley, T. (2017). Ottawa and empire: Canada and the military coup in Honduras. *Between the Lines*, <https://btlnbooks.com/book/ottawa-and-empire>



Protest against the coup d'état, Source: Jen Moore

The coup drastically increased human rights violations. Between 2010 and 2012 Honduras became one of the most dangerous countries in the world for its homicide rate, and was named by the UK organization Global Witness as one of the most dangerous countries in the world to be an environmentalist.<sup>10</sup> Part of the danger was due to the high levels of impunity that had characterized Honduras for decades, but the actions of the security forces against social movements and land struggles also skyrocketed. The twelve years following the coup saw the operation of death squads, drug trafficking networks and organized crime, in addition to the military police and special forces. The security forces collaborated closely with gangs, criminal organizations and, in the case of the Aguán Valley, with paramilitary groups.

Five months after the coup, elections were held despite doubts about the possibility of holding a democratic vote that context. The government of Porfirio 'Pepe' Lobo (2010-2014) was installed following elections plagued by fraud, and was characterized by impunity and increased political violence and corruption. Lobo's government and the National Congress, led by the then president of Congress – who would later become the two-term president of Honduras, Juan Orlando Hernández Alvarado (JOH) – sought to promote a pro-business climate in Honduras as a way to overcome the political and economic crisis generated by the coup.

<sup>10</sup> Global Witness. (January 31, 2017). Honduras: the most dangerous country in the world for environmental activism. <https://www.globalwitness.org/en/campaigns/environmental-activists/honduras-el-pa%C3%ADs-m%C3%A1s-peligroso-del-mundo-para-el-activismo-ambiental/>

A member of the same National Party as Lobo, JOH won the 2013 elections in the face of allegations of irregularities and fraudulent acts.<sup>11</sup> After taking office, JOH continued with the militarization of the country as a means to crush all opposition to his government and the neoliberal policies it promoted. When he was unable to achieve the policies his government wanted, JOH moved to control all branches of government or simply eliminate those that resisted. In 2014, four justices of the Constitutional Chamber of the Supreme Court were illegally removed from office in a “technical coup” by a National Party-controlled Congress. Their removal allowed the passage of legislation, including the ZEDE law, and gave the green light for JOH to seek presidential re-election.

In 2017, JOH ran for a second term despite widespread opposition and a constitutional ban on re-election. Once again, and more intensely than during the 2010 and 2013 elections, the 2017 elections were marked by serious allegations of fraud, sparking nationwide protests. For months Hondurans demonstrated vigorously in the face of electoral fraud, with at least thirty people killed and injured by state security forces, and hundreds during military curfews and in protests.<sup>12</sup>

As he had done in his first term, JOH continued the privatization of public goods and services and, along with members of his government, created a series of sophisticated financial instruments and non-governmental organizations to divert public money into the pockets of his political allies. Before and especially during his two-term presidency, JOH coordinated narcotics shipments, along with his brother, former Congressman Juan Antonio ‘Tony’ Hernández, and other drug traffickers. They received millions of dollars from drug cartels in exchange for protection, political favors and appointments to key government posts.<sup>13</sup>

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11 See: Torres, L. (November 25, 2013). Honduras: Zelaya announces ‘theft’ of elections to Xiomara Castro. La Prensa, <https://www.laprensa.hn/honduras/honduras-zelaya-denuncia-robo-de-elecciones-a-xiomara-castro-NBLP428353#image-1>

The Real News Network (December 8, 2013). Honduran Elections: Another Chapter of the Ongoing Elections. [https://www.youtube.com/watch?v=eQO7ZZaSq\\_Q#t=28](https://www.youtube.com/watch?v=eQO7ZZaSq_Q#t=28)

Center for Economic and Policy Research (December 6, 2013). Honduras’ Flawed Election: The Case of El Paraíso. <https://cepr.net/honduras-flawed-election-the-case-of-el-paraiso/>

12 Padilla, E. (December 28, 2017). Cofadeh registers 30 crimes during post-election crisis in Honduras. Criterio. <https://criterio.hn/41067/>

Deutsche Welle (December 27, 2018). Honduras: Justice demanded for 38 killed in crisis. Deutsche Welle. <https://www.dw.com/es/exigen-justicia-para-los-38-muertos-en-la-crisis-pol%C3%ADtica-de-honduras/a-46880442>

United Nations, Office of the High Commissioner (June 8, 2018). Human rights violations in the context of the 2017 elections in Honduras. <https://oacnudh.hn/oacnudh-presenta-informe-post-electoral>

13 This is one of the main arguments in the case of U.S. v. Juan Orlando Hernández (1:15-cr-00379) presented by U.S. prosecutors. The trial against JOH was held in the Southern District of New York from February 20 to March 8, 2024 and JOH was convicted of drug trafficking and instruments-related charges. For daily summaries of the trial and the arguments presented by the prosecution see: Honduras Now. <https://www.hondurasnow.org/category/daily-trial-summaries/>

Meanwhile back in 2011, Porfirio “Pepe” Lobo had been telling the world “Honduras Is Open for Business”. He and his government began advising large-scale drug traffickers and cartels to set up legitimate businesses in the country in order to receive contracts from state institutions to help them launder drug money.<sup>14</sup> Networks of lawyers, notaries, private sector investors, politicians and their families, military and police officers involved in drug trafficking or corruption networks seized the opportunity to use organized crime’s penetration of the state to their advantage.

In the years following the 2009 coup, Honduran governments approved a series of policies that welcomed international investment, which inevitably complemented and mixed with the interests of organized crime that took over the state. Considering the denunciations of the coup and its outcomes by international bodies – along with the profound human rights crisis, recognized networks of corruption within the state, and the widespread belief that the government has links to organized crime and drug cartels – investors during this period must have known about the despotic and repressive as well as criminal context into which they were putting their money.

As early as 2015 one of the main Honduran banks, registered in Panama and owned by the Rosenthal family (which has filed an arbitration claim against Honduras, as we will see below), was publicly designated by the US Treasury Department for engaging in illicit activities, including money laundering.<sup>15</sup> The Rosenthals reportedly had ties and business dealings with the powerful Los Cachiros drug trafficking cartel.<sup>16</sup> They were sanctioned in 2013 by the US Treasury’s Office of Foreign Assets Control (OFAC) as individuals involved in drug trafficking and money laundering.<sup>17</sup> Several of their properties and many of their legitimate or “clean” businesses were identified and/or seized after they were named by OFAC. Mining, infrastructure and construction, power

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14 Bueso, A. (October 8, 2020). Narco política, el caso que pone en evidencia el financiamiento del narcotráfico a las campañas políticas en Honduras. CESPAD. <https://v1.cespad.org.hn/2020/10/08/narco-politica-el-caso-que-pone-en-evidencia-el-financiamiento-del-narcotrafico-a-las-campanas-politicas-en-honduras/>

Spring, K. (November 5, 2020). The Marriage of Drug Money and Neoliberal Development in Honduras. NACLA. <https://www.tandfonline.com/doi/abs/10.1080/10714839.2020.1840167>

Public Prosecutor’s Office (November 16, 2023). New arrest warrants are issued in the Narcopolitics II case. <https://www.mp.hn/publicaciones/libran-nuevas-ordenes-de-captura-en-el-caso-narcopolitica-ii/>

15 U.S. Department of Treasury (October 7, 2015). Treasury Sanctions Rosenthal Money Laundering Organization. <https://home.treasury.gov/news/press-releases/jl0200>.

16 La Prensa (October 12, 2015). Business dealings with Los Cachiros sank Los Rosenthal. <https://www.laprensa.hn/honduras/negocios-con-los-cachiros-hundieron-a-los-rosenthal-FDLP889491>

17 U.S. Department of Treasury (September 19, 2013). Treasury Targets “Los Cachiros” Drug Trafficking Organization in Honduras. <https://home.treasury.gov/news/press-releases/jl2168>

generation and tourism companies, some of which had active contracts or concessions with the Honduran government, were turned over to US authorities.<sup>18</sup> The Cachiros were also linked to Fabio Lobo, President Lobo's son who, along with Honduran police officers, trafficked drugs to the US and is now in prison there for the offense.<sup>19</sup>

In 2016, a year before JOH ran for an illegal second term, his brother "Tony" Hernandez was forced to come out publicly and deny ties to drug trafficking after a military official alleged he was transporting narcotics from Colombia in his own helicopter.<sup>20</sup>

JOH's second term was marked by scandals linking several members of his government, himself and his brother to drug trafficking and corruption networks.<sup>21</sup> In 2019, his brother was convicted in New York of involvement in large-scale drug trafficking.<sup>22</sup> As the scandals piled up against him, the cost of continuing to support JOH and the National Party became too high for the U.S. In addition, the interests of various sectors in Honduras became increasingly aligned against the continuation of the narco-dictatorship, paving the way for the victory of the Liberty and Refoundation Party (known as LIBRE, the Spanish word for "free"), led by former President Manuel Zelaya and his wife Xiomara Castro Sarmiento, presidential candidate in the 2021 elections.

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18 Gagne, D. (March 10, 2017). Awarding contracts to Honduras drug traffickers is a sign of cyclical corruption. *Insight Crime*. <https://insightcrime.org/es/noticias/analisis/concesion-contratos-narcotraficantes-honduras-muestra-corrupcion-ciclica>

19 Riesenfeld, L. (May 22, 2015). Son of former Honduran president captured for drug trafficking. *Insight Crime*. <https://insightcrime.org/es/noticias/noticias-del-dia/hijo-expresidente-honduras-capturado-narcotrafico/>

20 La Prensa (October 13, 2016). Tony Hernández denies links to illegal activities. <https://www.laprensa.hn/honduras/tony-hernandez-niega-vinculos-con-actividades-ilegales-OWLP1008262#image-1>

21 Padilla, E. (May 25, 2022). Corrupción de gobierno de Juan Orlando Hernández arrastró a periodistas y su cúpula. Criterio. <https://criterio.hn/corrupcion-de-gobierno-de-juan-orlando-hernandez-arrastro-a-periodistas-y-su-cupula/>

CNN. (June 25, 2015). Juan Orlando Hernández rejects accusations of nepotism. <https://cnnespanol.cnn.com/2015/06/25/juan-orlando-hernandez-en-conclusiones>:

Revistazo (June 2018). Pandora case. <http://revistazo.com/ajedrez/casos/pandora.html>:  
La Prensa (September 13, 2018). IHSS: The largest embezzlement in the history of Honduras. <https://www.laprensa.hn/honduras/ihss-desfalco-honduras-corrupcion-latinoamerica-escandalos-sobornos-IXLP1215841#image-1>

22 U.S. Attorney's office, Southern District of New York (March 30, 2021). Former Honduran Congressman Tony Hernandez Sentenced To Life In Prison And Ordered To Forfeit \$138.5 Million For Distributing 185 Tons Of Cocaine And Related Firearms And False Statements Offenses. <https://www.justice.gov/usao-sdny/pr/former-honduran-congressman-tony-hernandez-sentenced-life-prison-and-ordered-forfeit>



Demonstration during hearing against JOH in New York; Source: Karen Spring

Xiomara Castro is the first woman president of Honduras. Upon taking office, her party and her government pledged to re-found Honduras and reverse many of the policies implemented by the narco-dictatorship during the “lost decade”, as she calls the years following the coup. However, this has proven to be extremely difficult due to the weakness of the government and its own limitations, but also due to the strong opposition to even the slightest attempt to roll back the policies implemented by the post-coup governments. In addition, not only are several state institutions still under the control of organized crime interests or opposition parties, but the narco-dictatorship left the country in economic chaos. The economic situation can only worsen with 15 lawsuits pending against the Honduran state and threats of more cases to come should the government attempt to shift the commitments made to companies under the narco-dictatorship.

## 2.2. Changes following the coup d'état

After the coup d'état against Manuel Zelaya in 2009, the new elections had to be legitimized. To this end, the coup government created a National Plan that would guide the development and investment strategy between 2010 and 2022. Although the 'Plan de Nación' was written in neutral and "ideology-free" language, it was implemented as a neoliberal development framework that was pro-foreign investment. It could thus also serve to attract the support of international financial institutions such as the World Bank, which require countries in the global South to have national development plans to ensure that loans and aid are provided for the purpose of furthering the country's development vision.<sup>23</sup>



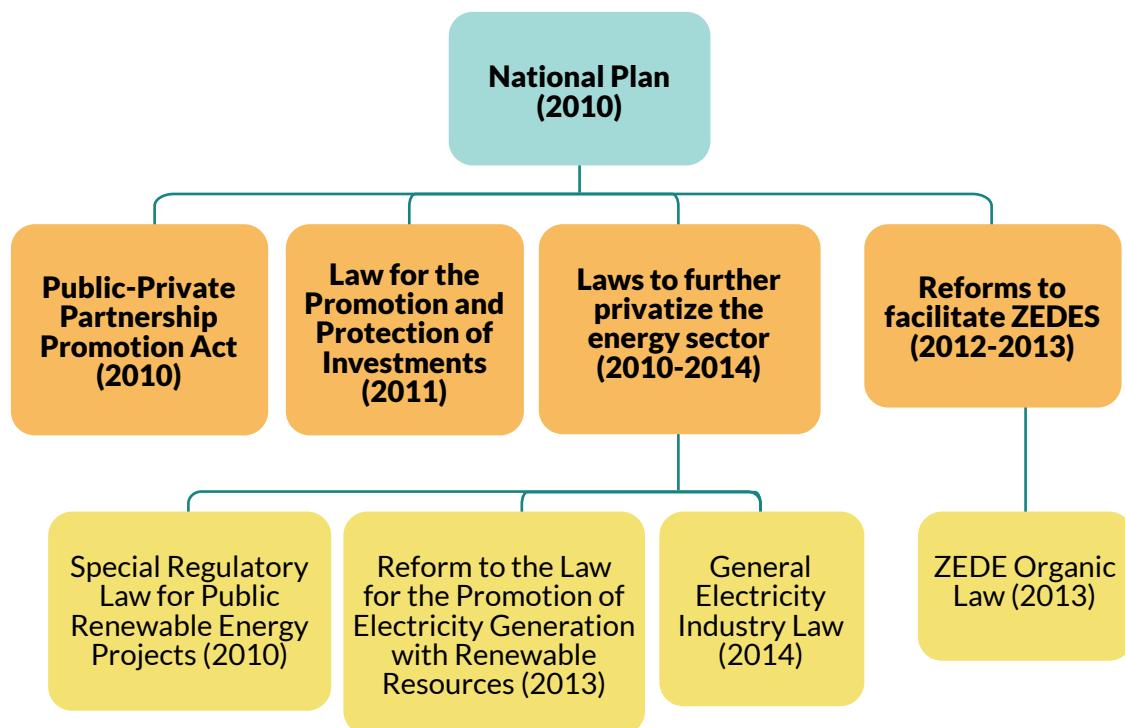
The National Plan constitutes a pro-business legal and institutional framework from which a series of laws and contracts would subsequently be approved. Through eleven strategic guidelines, with fifty-eight sectoral indicators to measure its progress, this plan proposed to lay the foundations for the economic and social construction of the "Honduras of the future", with the year 2022 as a medium-term objective and the year 2038 for the long term. Citing this plan:

"The legal framework must be harmonized and the institutions with direct responsibilities for the administration of natural resources and the environment must be consolidated, developing processes of institutional modernization, administrative facilitation, decentralization, de-concentration and budgetary adjustment."<sup>24</sup>

23 Global Partnership for Effective Cooperation (October 26, 2022). *Honduras' National Development Vision and Plans*. <https://www.effectivecooperation.org/honduras-national-development-vision-and-plans>

24 National Congress (January 2010). *Visión de País 2010-2038 y Plan de Nación 2010-2022*. <https://www.tsc.gob.hn/web/leyes/plan-de-nacion.pdf>

The National Plan demonstrated the economic vision of the coup government and, in practice, was accepted and supported by international financial institutions,<sup>25</sup> establishing means for the insertion of Honduras into the global economy. In it, the exploitation of natural resources (water, soil, forests) appears as the fundamental pillar for the consolidation of Central American leadership in terms of agri-food production, ecotourism and electricity generation from renewable sources, for which the implementation of public-private investment projects is proposed.



25 For example, Stand-by Agreement for US\$202 million with the International Monetary Fund in 2010 to "improve the business climate in Honduras; increase foreign and domestic investment through public-private partnerships (PPPs)". See: International Monetary Fund (October 1, 2010). *Press Release: IMF Executive Board Approves US\$202 Million in Financial Support for Honduras*. <https://www.imf.org/es/News/Articles/2015/09/14/01/49/pr10374>;

Inter-American Development Bank (IDB) loan in 2014 for US\$130 million for programmatic support to the electricity sector reform agenda, project no. HO-L1070. See: Inter-American Development Bank (December 11, 2014). *Programmatic Support to the Power Sector Reforms Agenda*, <https://www.iadb.org/en/project/HO-L1070>;

IDB loan, Project HO-L1191: Support for Investment Attraction and Job Creation in Honduras (ZEDE) that was cancelled in 2017 after strong complaints from Honduran civil society. See: BiodiversidadLA. (November 27, 2017). *Honduras: OFRANEH sends letter to IDB president for the inconsistent "model cities"*. [https://www.biodiversidadla.org/Documentos/Honduras\\_OFRANEH\\_envia\\_carta\\_a\\_presidente\\_del\\_BID\\_por\\_las\\_inconsultas\\_ciudades\\_modelo](https://www.biodiversidadla.org/Documentos/Honduras_OFRANEH_envia_carta_a_presidente_del_BID_por_las_inconsultas_ciudades_modelo)

Given that the country was going through a political crisis, there was no dialogue among the various sectors of Honduran society in order to elaborate the National Plan. On the contrary, it emerged from a process of consensus-building among the same elites in order to remain in power. Thus, the plan turned out to be a vertical project,<sup>26</sup> imposed from above.

The laws presented below were drafted based on the National Plan. They facilitated most of the concessions and contracts that are the basis for the ongoing supranational arbitration claims. In addition, the plan and its legislative elements acted as a springboard for organized crime structures to increase their power and legitimacy, ultimately leading to the construction of a narco-state.

### **2.2.1. Law for the Promotion of Public-Private Partnerships (2010)<sup>27</sup>**

The Law for the Promotion of Public-Private Partnerships created the PPPs, defined as a collaboration scheme between the public and private, national and international sectors that adopts multiple models and distributes the risk among the parties involved (private sector and State). The law created the Commission for the Promotion of Public-Private Partnerships (COALIANZA), the decentralized State institution responsible for promoting, entering into and supervising PPP contracts.<sup>28</sup> At least three ongoing lawsuits arise from PPP contracts: Autopistas del Atlántico S.A., Palmerola International Airport S.A. de C.V., Eléctricas de Medellín Ingeniería y Servicios S.A.S.

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26 The National Plan was orchestrated by one of the most notorious and controversial business negotiators of the transition: Arturo Corrales. A politician who went through different parties and governments, this character represents the most unscrupulous mode of doing politics in Honduras - a mode that became more evident in the turbulent situation after the 2009 coup d'état. See: Resumen Latinoamericano (March 1, 2020). *Honduras. Profile of corrupt Arturo Corrales: "Today it rained for me."* <https://www.resumenlatinoamericano.org/2020/03/01/honduras-perfil-del-corrupto-arturo-corrales-hoy-lluvio-para-mi/>

27 Law for the Promotion of Public-Private Partnerships. Decree 143-2010 (September 16, 2010). La Gaceta No. 32317. <https://www.tsc.gob.hn/web/leyes/Ley%20de%20Promoci%C3%B3n%20de%20la%20Alianza%20P%C3%BAblico-privada.pdf>

28 See: Article 13 of the Law for the Promotion of the Public-Private Alliance, for the seventeen functions and responsibilities of COALIANZA, <https://www.tsc.gob.hn/web/leyes/Ley%20de%20Promoci%C3%B3n%20de%20la%20Alianza%20P%C3%BAblico-privada.pdf>.



Some of COALIANZA's activities would be declared secret in 2014, when the Honduran National Congress passed the Law for the Classification of Public Documents Related to National Security and Defense (known as the Secrecy Law) that declared the documents and operations of COALIANZA and thirteen other state institutions as subject to classification for national security reasons.<sup>29</sup> For years, national and international agencies, including the Inter-American Development Bank (IDB), expressed concern about the limited auditing and oversight of COALIANZA's operations.<sup>30</sup> The institution and its management (commissioners) were believed to be closely controlled by President JOH.<sup>31</sup>

At the time, it was believed that one of the reasons for the lack of transparency and accountability in COALIANZA was the way in which the institution managed funds that were not included in the national budget and therefore exempted from the application of the State Contracting Law (2001) and subsequent oversight. Government officials and private sector partners were suspected of exploiting off-budget finances for personal gain and enrichment.<sup>32</sup> Honduran private banks were even reluctant to include PPP projects in their portfolios and the Honduran Council of Private Enterprise (COHEP) called COALIANZA a "nest of corruption".<sup>33</sup>

29 Padilla. E. (July 10, 2017). Secrecy law is a shield for the corrupt. *Criterio*. <https://criterio.hn/ley-secretos-escudo-los-corruptos/>

Irías, G. (July 10, 2023). Análisis Semanal | A propósito del Caso Palmerola, las asociaciones públicas-privadas un modelo de voraz drenaje de los recursos públicos y exclusión ciudadana. CESPAD. <https://cespad.org.hn/analisis-semanal-a-propósito-del-caso-palmerola-las-asociaciones-públicas-privadas-un-modelo-de-voraz-drenaje-de-los-recursos-públicos-y-exclusión-ciudadana/>

30 Chayes, S. (2017). When corruption is the operating system: The case of Honduras. *Carnegie Endowment for International Peace*. [https://carnegieendowment.org/files/Chayes\\_Corruption\\_Final\\_updated.pdf](https://carnegieendowment.org/files/Chayes_Corruption_Final_updated.pdf)

31 For example, a loyal supporter and ally of the president, Wilfredo Cerrato was one of the three commissioners in charge of COALIANZA, before being appointed finance minister and then president of the Central Bank of Honduras.

32 Chayes, S. Ob. cit.

33 Notibomba (March 8, 2019). COHEP says Coalanza is a nest of corruption. <https://notibomba.com/cohep-dice-que-coalianza-es-un-nido-de-corrupcion/>

In 2019, probably in response to national and international allegations about its corrupt practices, COALIANZA's offices in Tegucigalpa were raided by the Technical Agency for Criminal Investigation (ATIC by its initials in Spanish).<sup>34</sup> A few months later, COALIANZA was dismantled.

### **Arbitration claims arising from the Public-Private Partnership Law**

Autopistas del Atlántico S.A. and others

Palmerola International Airport S. A.

Eléctricas de Medellín Ingeniería y Servicios S.A.S.

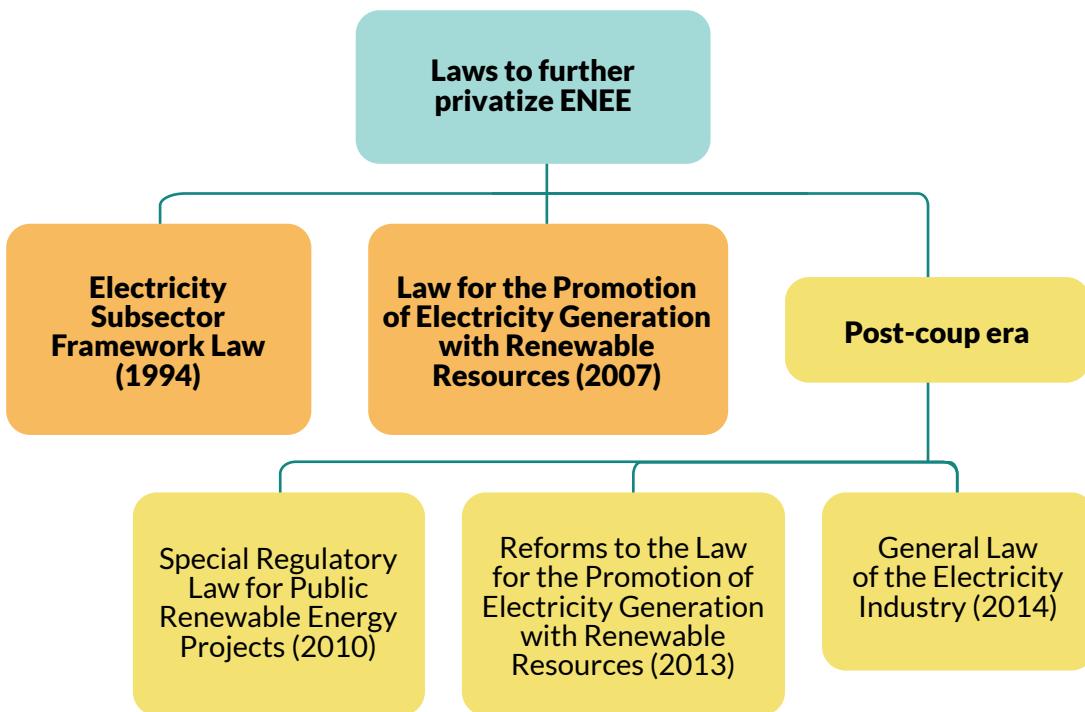
#### **2.2.2. Energy sector reform package (2010-2014)**

Since the 1990s, national and international actors have been interested in privatizing the National Electric Energy Company of Honduras (ENEE). The process has been carried out through various laws, such as the Framework Law of the Electricity Subsector (1994) and the Law for the Promotion of Electricity with Renewable Resources (2007). After the 2009 coup, a package of laws for the privatization of electricity generation and distribution deepened this process, with the Special Regulatory Law for Public Renewable Energy Projects (2010), reforms to the Law for the Promotion of Electricity Generation with Renewable Resources (2013), and the General Law for the Electricity Industry (2014).

Seven of the ongoing lawsuits against Honduras are in response to this reform package and the efforts of Xiomara Castro's government to renegotiate the terms of these investments. They are being brought by: Fernando País Andrade and Anabella Schloesser de León de País; Inversiones y Desarrollos Energéticos S.A.; Norfund and KLP Norfund Investments AS; Scatec ASA; Eléctricas de Medellín Ingeniería y Servicios S.A.S.; X-Elio Energy S.L.; and Víctor Miguel Silhy Zacarías.

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<sup>34</sup> La Prensa (January 31, 2019). ATIC seizes documentation in Coalianza and the mayor's office in Tegucigalpa. <https://www.laprensa.hn/honduras/la-atic-secuestra-documentacion-en-coalianza-y-alcaldia-de-tegucigalpa-ICLP1254963#image-1>



The reforms to the General Law of the Electricity Industry (2014) achieved the near complete privatization of the energy sector in Honduras, as well as regulating the import and export of energy and allowing the broad participation of public, private and mixed capital actors in the generation and commercialization of the sector. The reforms proposed dividing ENEE into three companies: one for generation, one for transmission and system operation, and one for distribution. Since the late 1990s, this has been roundly rejected by the civil society organizations that formed the Popular Bloc in 1999, when efforts to privatize energy distribution were originally proposed.

The 2014 reform laid the groundwork for the Public-Private Partnership (PPP) contract to be signed in 2016 between ENEE and Empresa Energía Honduras (EEH) for the management of energy distribution, which is now the subject of a US\$500 million claim against the State, according to sources from the Attorney General's Office (PGR). The same law mentions the need to encourage investments in renewable energies given the interest and financial contributions of multilateral and bilateral organizations such as the Export-Import Bank of the United States, the International Finance Corporation (IFC) of the World Bank and the FMO bank of Holland, among others.<sup>35</sup>

<sup>35</sup> Amendments to the Law for the Promotion of Electric Energy Generation with Renewable Resources. Decree 138-2013. (August 1, 2013). La Gaceta No. 33191. [https://www.tsc.gob.hn/web/leyes/Ref\\_art\\_2\\_ley\\_promocion\\_energia\\_electrica\\_2013.pdf](https://www.tsc.gob.hn/web/leyes/Ref_art_2_ley_promocion_energia_electrica_2013.pdf)

Also relevant to ongoing claims is the Special Regulatory Law for Public Renewable Energy Projects (2010) which was justified by Honduras' commitments in the National Plan, which stated that by 2022 70% of the country's energy would be generated through renewable resources. This could be a reasonable policy considering that Honduras is suffering an energy crisis and relies heavily on thermal power generation produced by private generators. Shortly thereafter, in 2013, the National Congress reformed the 2007 Law for the Promotion of Electricity from Natural Resources, declaring solar energy generation a "national priority" and offering a special economic incentive consisting of tax exemptions and the payment of an additional three cents per kilowatt/hour over the base price of energy.

### **Seven claims resulting from energy sector reforms**

Fernando País Andrade & Anabella Schloesser de León de País

Inversiones y Desarrollos Energéticos S.A.

Norfund & KLP Norfund Investments AS

Scatec ASA

Eléctricas de Medellín Ingeniería y Servicios S.A.S.

X-Elio Energy S.L.

Víctor Miguel Silhy Zacarías

#### **2.2.2.1. Massive approval of solar energy contracts**

In January 2014, only five months after the reforms to the Electric Energy Promotion Law were published in the official newspaper *La Gaceta*, the National Congress approved in a single session more than one hundred renewable energy projects; twenty-three of these contracts corresponded to solar energy and were awarded to twenty-one companies.

This legislative session is known as the “legislative diarrhea” of 2014.<sup>36</sup> The process was riddled with irregularities and corruption for three reasons:

1. The twenty-three contracts were approved on January 20, 2014 in the small hours of the morning, one day after the closing of legislative sessions on January 19. Moreover, it was the same day that JOH, then president of Congress, ended his term before entering the Presidential House. All contracts were awarded without a bidding process.
2. Each of the twenty-one companies that received the twenty-three contracts were new and had been created, on average, nine months earlier. Only two companies had prior experience in solar power generation and the rest did not meet the legal requirements established in the State Contracting Law to receive a state contract. Seventeen of those twenty-one companies were sold between five and fifteen months after obtaining the contracts, suggesting that they were “briefcase companies”.<sup>37</sup> It was later discovered that some of the owners of the beneficiary companies were linked to JOH’s drug-trafficking associates (See section 4.3.3 ‘Claims over the renegotiation of electricity contracts’).
3. The contracts obligated the State to pay an inflated price per kilowatt-hour (kWh) of energy for a period of twenty years. In the contracts, ENEE committed to pay 15 cents per kWh compared to the Latin American average of 11 cents per kWh. This generated enormous concern about ENEE’s growing debt and the exorbitant price the state would pay to private solar power generators.<sup>38</sup>

The congressional session that led to this ‘legislative diarrhea’ is just one of many acts of corruption and neoliberal legislation that contextualize the seven current suits being brought by the energy sector. The efforts of President Castro and her government to mitigate and renegotiate the terms set by the narco-dictatorship in policies that benefited the Honduran elite, foreign companies and drug traffickers linked to JOH, have upset those who benefited economically from the further privatization of ENEE. The

36 Padilla, E. (November 21, 2017). Learn about some of the decrees approved in the so-called “Parliamentary Robbery of the Century in Honduras”. Criterio. <https://criterio.hn/conozca-algunos-de-los-decretos-aprobados-en-el-denominado-robo-parlamentario-del-siglo-en-honduras-video/>

37 Partnership for a More Just Society. (November 1, 2018). Research 1: Burned The solar energy bargain. [https://revistazo.com/docs/Investigacion\\_Quemados.pdf](https://revistazo.com/docs/Investigacion_Quemados.pdf)

38 Ibid.

introduction of the Special Law to Guarantee Electric Energy Service as a Public Good of National Security and a Human Right of Economic and Social Nature (2022) (hereinafter, Electric Energy Law, 2022) triggered the avalanche of lawsuits in the energy sector, with the possibility of more in the near future.



April 24, 2015, No to the privatization of ENEE, Source: Karen Spring

### 2.2.3. Reforms to facilitate ZEDEs (2012 to 2013)

The Employment and Economic Development Zones in Honduras, also known as “model cities”, “charter cities” or Special Development Regions (RED) as they were called in their first debut in 2011, were created, according to their own terms, with the objective of attracting foreign investment and fostering economic development in specific zones created exclusively for that purpose.

ZEDEs are territories that enjoy a maximum degree of autonomy in terms of legal, tax and administrative regulation due to the fact that, according to their promoters, this helps attract private investment and promotes a favorable business environment. In that sense, ZEDEs have rules that differ from the general laws of the country, existing within the borders of the state, but outside of national jurisdiction.<sup>39</sup> These projects have been the subject of great debate and controversy in Honduras, as they involve a cession of sovereignty.

<sup>39</sup> According to the expert in International Law, Professor Ph. Javier I. Echaide, adjunct researcher at the National Council for Scientific and Technical Research (CONICET), Argentina, ZEDEs imply a kind of extraterritorial application of laws or a situation of territorial exception to national jurisdiction. If so, this would create a kind of “legal limbo” in which national laws do not apply to the territories where the ZEDE are located, but would create a “legislation of exception”.

“The ZEDEs are an extended and profound neocolonial expression that arise from a corporate rather than a nation-state concept, although with the backing of some governments of countries in the global north. In addition, they mix neoliberal concepts of privatization of the State until they practically reach the libertarian thesis of the state’s destruction and the constitution of new administrative concepts of territories.”

– *Fernando García, presidential commissioner for the repeal of the ZEDE, in personal conversation, July 22, 2024.*

Various social, trade, business, academic and religious organizations and local governments (municipalities) in Honduras argue that the ZEDEs violate the Constitution because they imply a territorial exception to national jurisdiction and a modification of the form of government in these territories, which in fact implies a loss of national sovereignty.<sup>40</sup> ZEDEs are also criticized because their implementation has implied the transgression of human rights due to the displacement of communities and environmental destruction.<sup>41</sup> Thus, although several ZEDEs have been proposed since their approval in 2013, their implementation and progress have been subject to challenges and resistance in different locations.<sup>42</sup>

40 CESPAD. (July 14, 2021). *Coyuntura desde los territorios | El papel de los gobiernos locales en la lucha contra las ZEDEs.* <https://v1.cespad.org.hn/2021/07/14/coyuntura-desde-los-territorios-el-papel-de-los-gobiernos-locales-en-la-lucha-contra-las-zedes/>; PBI Honduras (n. d.). *Honduras no se ZEDE.* <https://pbi-honduras.org/es/news/2021-07/honduras-no-se-zede>;

BBC News. (April 22, 2022). *The Honduran Parliament repeals the controversial Zede as it considers that they violate the country's sovereignty.* <https://www.bbc.com/mundo/noticias-61184299>;

Galo, K. (March 26, 2024). *La única opción para eliminar las ZEDEs es que sean declaradas inconstitucionales: Edmundo Orellana.* Criterio. <https://criterio.hn/la-única-opcion-para-eliminar-las-zede-es-que-sean-declaradas-inconstitucionales-edmundo-orellana/>

41 United Nations (June 8, 2021). *ZEDEs could pose serious risks to the guarantee of human rights by the State of Honduras.* <https://honduras.un.org/es/130598-las-zede-podr%C3%ADan-suponer-serios-riesgos-para-la-garant%C3%ADa-de-los-derechos-humanos-por-parte>;

Broad Movement for Dignity and Justice (Movimiento Amplio por la Dignidad y la Justicia) (June 18, 2021). *ZEDES threaten the sovereignty and environmental and cultural biodiversity of the department of Atlántida.* <https://madj.org/2021/06/18/las-zedes-atentan-contra-la-soberanía-y-biodiversidad-ambiental-y-cultural-del-departamento-de-atlantida/>

Burgos, J. (July 2, 2021). *ZEDE will provoke forced displacement and migration.* Criterio. <https://criterio.hn/las-zedes-provocaran-desplazamiento-forzado-y-migracion/>

42 CESPAD. (July 14, 2021). *Coyuntura desde los territorios | El papel de los gobiernos locales en la lucha contra las ZEDEs.* <https://v1.cespad.org.hn/2021/07/14/coyuntura-desde-los-territorios-el-papel-de-los-gobiernos-locales-en-la-lucha-contra-las-zedes/>;

PBI Honduras (n.d.). *Honduras no se ZEDE.* <https://pbi-honduras.org/es/news/2021-07/honduras-no-se-zede>; National Lawyers Guild. (September 14, 2014). *Report of the National Lawyers Guild Delegation Investigation of the Zones of Economic Development and Employment in Honduras.* [https://www.nlginternational.org/report/Final\\_NLG\\_ZEDE\\_Report.pdf](https://www.nlginternational.org/report/Final_NLG_ZEDE_Report.pdf).



Protest against ZEDEs, which are sometimes also referred to as model cities. Source: Karen Spring

“What characterizes the ZEDE is the creation of a territory on another territory, the creation of a new police force, a new judicial apparatus. The ZEDE must be understood in the framework of a new wager in international economic dynamics – for negating the State, and for a libertarian resetting of the economy.”

– *Lucía Vijil, in interview, May 9, 2024.*

The creation of the ZEDE was only possible through a constitutional reform approved by the National Congress on January 25, 2013 just before the end of the legislative period, through Legislative Decree No. 236-2012,<sup>43</sup> which reforms articles 294, 303 and 329 of the Constitution. Subsequently, the reform was ratified<sup>44</sup> on March 13, 2013 through Legislative Decree No. 09-2013,<sup>45</sup> following the regulation that requires reforms to be ratified in the following legislative period, before being sanctioned by the President of the Republic.

43 Amendments to Articles 294, 303, 329. Decree 236-2012. (January 24, 2013). La Gaceta No. 33,033. [https://www.tsc.gob.hn/web/leyes/Reformar\\_art\\_294\\_303\\_329\\_constitucion\\_2013.pdf](https://www.tsc.gob.hn/web/leyes/Reformar_art_294_303_329_constitucion_2013.pdf)

44 Constitutional reforms in Honduras, as in the case of ZEDE, require congressional approval in two separate legislative periods.

45 Ratification of Decree 236-2012. Decree 9-2013. (March 20, 2013). La Gaceta no. 33,080. <https://www.aduanas.gob.hn/wp-content/uploads/2020/11/DECRETO-No.-9-2013.pdf>. <https://www.aduanas.gob.hn/wp-content/uploads/2020/11/DECRETO-No.-9-2013.pdf>

In July 2013, Decree No. 153-2013 created the Program for the Establishment of Employment and Economic Development Zones (ZEDE) to be in charge of “the multidisciplinary technical procedures that are indispensable for the successful implementation of said Project”.<sup>46</sup>

Another fundamental aspect is that the reform of Article 329 establishes that, for the creation and operation of the ZEDE, Congress must approve an Organic Law.<sup>47</sup> This was approved in 2013 through Legislative Decree No. 120-2013.<sup>48</sup> Among other provisions, this new ZEDE Organic Law creates the Committee for the Adoption of Best Practices (CAMP), through Decree No. 368-2013, approved on January 14, 2014. The CAMP is an administrative body that cannot itself create a ZEDE, as this is an attribution of the National Congress.<sup>49</sup> The CAMP, composed of twenty-one persons appointed by the President, is in charge of the operation of a ZEDE. Among its functions are the appointment of the technical secretary of each ZEDE, to establish the general guidelines for internal policy and transparency of the ZEDE, to approve the regulations proposed by the technical secretary, etc.

All these constitutional and legislative regulations related to the creation and implementation of the ZEDEs were approved during JOH's term as President of the National Congress, in a process of questionable legitimacy from the outset, and vitiated by irregularities. In the first place because JOH, from his position in Congress, had already tried to promote the creation of “model cities” back in 2011, then under the moniker of Special Development Regions (RED). The National Congress, through Decree No. 283-2010, published in *La Gaceta* in February 2011, amended Articles 304 and 309 of the Constitution, creating a favorable framework for REDs. This decree was ratified on February 28, 2011, through Decree No. 4-2011 and published in *La Gaceta* the following March 7.

However, in October 2012, the Constitutional Chamber of the Supreme Court of Justice declared the REDs unconstitutional for violating the principle of popular sovereignty,<sup>50</sup>

46 Decree No. 153-2013. (August 5, 2013). *La Gaceta* no. 33,194.

47 Mejía J. (November 8, 2023). *A quick look at the current legal situation of the ZEDE*. <https://eric-sj.org/noticias/una-mirada-rapida-a-la-situacion-juridica-actual-de-las-zede/>

48 Organic Law of Employment and Economic Development Zones. Decree 120-2013. (September 6, 2013). *La Gaceta* no. 33,322. [https://www.tsc.gob.hn/web/leyes/Ley\\_zonas\\_empleo\\_desarrollo\\_eco\\_2013.pdf](https://www.tsc.gob.hn/web/leyes/Ley_zonas_empleo_desarrollo_eco_2013.pdf)

49 See: Mejía, J. (2023). Notes for reflection on the international claims derived from the repeal of the ZEDE. *Envío*, 21(73). <https://drive.google.com/file/d/1bFBjw0DDDeON5-IlwrfBSXOgbYOq9ODJjQ/view>

50 *Ibid.*

stating that Congress did not have the power to grant concessions that infringed on the territorial integrity, sovereignty and independence of Honduras.<sup>51</sup>

Despite this initial defeat, JOH insisted on his project. In December of the same year Congress illegally dismissed four magistrates who opposed the REDs, without any right to defense. A month later, in January 2013, Congress approved and ratified the constitutional reform to create the ZEDEs, as already noted. On this occasion, the ZEDE Law was declared Constitutional by the new Constitutional Chamber of the Supreme Court of Justice, which was composed in part of magistrates who replaced those who had initially opposed the REDs as unconstitutional.<sup>52</sup> In September of the same year, Congress approved the ZEDE Organic Law through Legislative Decree No. 120-2013.<sup>53</sup>

The constitutional reform process to enable the ZEDEs was marred by irregularities, given that the JOH-led Congress had dismissed the four magistrates who had determined that the RED initiative was unconstitutional without the right to defend themselves. Some critics called the dismissal of the magistrates a “technical coup”, since the magistrates who opposed RED were dismissed, but not the magistrate who said that RED was constitutional. After these events, this latter magistrate was promoted to president of the Constitutional Chamber and subsequently appointed attorney general by the National Congress in an unusual procedure.<sup>54</sup>

On the other hand, the dismissal of the four magistrates was qualified as “arbitrary” by the Inter-American Court of Human Rights (IACtHR), which declared the State of Honduras internationally responsible for this event. In its judgement, the IACtHR said that Congress dismissed the magistrates while the building was surrounded by military and police; that the magistrates had not even been notified about the procedure for their dismissal and their motions were rejected; and that the dismissal was carried out by an authority that lacked competence, which signified a violation of judicial independence.<sup>55</sup>

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51 "Constitutional Chamber. SCO RI- 769-11 Sentencia del 17 de octubre de 2012, considerando 19 y 28. <https://hn.vlex.com/vid/671832869> Cited by Mejía, J. (2023). p. 23.

52 See: Mejía, J. (2023).

53 Organic Law of Employment and Economic Development Zones. See note 48.

54 See: García, F. (2018). Bubble Cities. *Political-Legal Analysis of the Legislation of Employment and Economic Development Zones (ZEDE) in Honduras*. Análisis, 9. <https://library.fes.de/pdf-files/bueros/fesamcentral/16510.pdf>

55 Inter-American Court of Human Rights (April 1, 2024). *Honduras is internationally responsible for the arbitrary dismissal of three magistrates and a magistrate of the Constitutional Chamber and the Supreme Court of Justice of Honduras*. [https://www.corteidh.or.cr/docs/comunicados/cp\\_21\\_2024.pdf](https://www.corteidh.or.cr/docs/comunicados/cp_21_2024.pdf)

### Graphic 1. Chronology of the handover of sovereignty from Honduras to ZEDEs



The chart shows the basic chronology of the creation of ZEDEs in Honduras. As for the CAMP, which we noted above was created through a provision of the ZEDE Law, it was appointed on January 14, 2014, by then President Porfirio Lobo, through Executive Agreement No. 003-2014, a few days before the end of his term and a few days before JOH assumed the presidency. With this regulation, the CAMP acquired powers to modify its members without having to go through congress.<sup>56</sup> Its twenty-one members were mostly foreigners with different profiles, such as businesspeople. It contained only four Hondurans, including former President Ricardo Maduro Joest, those investigated for corruption, Ebal Jair Díaz and Ricardo Leonel Cardona, and a former public official, Octavio Rubén Sánchez Barrientos.<sup>57</sup> In May 2021, Decree No. 32-2021 was also

56 See: García, F. Ob. cit.

57 Perdomo, M. (August 9, 2023). ZEDE Próspera, el proyecto anarcocapitalista que se ha adueñado sigilosamente del 3% de isla en el caribe hondureño. Criterio. <https://criterio.hn/zede-próspera-el-proyecto-anarcocapitalista-que-se-ha-adueñado-sigilosamente-del-3-de-isla-en-el-caribe-hondureño/>

approved, regarding the sales tax levied on goods and services that ZEDEs or companies perform in Honduras, which was reformed in August of the same year.

Currently, the monumental lawsuit for almost 11 billion dollars in ICSID – brought by the North American group Honduras Próspera Inc. and its affiliates St. John's Bay Development Company LLC and Próspera Arbitration Center LLC, the self-named Próspera Group<sup>58</sup> – is in response to pressure from the Honduran people and the corresponding reforms of the current administration of President Xiomara Castro to dismantle the regulatory framework that, in an irregular and illegitimate manner, brought about the ZEDEs.

Fernando Garcia reports that these actions by the government are responding to the demands of civil society and more than seventy local governments (municipalities) in Honduras, which have been actively rejecting ZEDEs since 2011, and which have been taken up by the executive branch through concrete actions.<sup>59</sup> However, the cost promises to be high, not only because of the current arbitration claim for ZEDE Próspera, but also because this may encourage other ZEDEs to sue the State, such as ZEDE Ciudad Morazán, which has also threatened to bring a possible claim.<sup>60</sup>

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58 Honduras Próspera Inc, St. John's Bay Development Company LLC, and Próspera Arbitration Center LLC v. Republic of Honduras. ICSID Case No. ARB/23/2. ICSID Convention - Arbitration Rules. (February 3, 2023). <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/2>

59 García, Fernando. Presidential Commissioner against the Employment and Economic Development Zones (ZEDE). Online communication. July 22, 2024.

60 El Libertador (March 11, 2024). *Italian threatens President Castro if she orders closure of ZEDE Próspera*. <https://ellibertador.hn/2024/03/11/italiano-amenaza-a-presidenta-castro-si-ordena-cierre-de-zede-prospera/>

### 3. Extraordinary privileges for investors: four legal instruments against the people.

In May 2011, the government of Porfirio “Pepe” Lobo organized an event called *Honduras Is Open for Business* to present to a national and international audience its plan to promote private investment.<sup>61</sup> According to media outlet *La Prensa*, it would be an event that “will change the history of the country” in the same way that the FTA with the US opened the neoliberal period in Honduras and Hurricane Mitch in 1998 was used to deepen neoliberal policies.<sup>62</sup> During the event, the Government invited national and international investments in 149 projects across forestry, tourism, energy, agribusiness, railroads and services, valued at billions of dollars.<sup>63</sup> It was also the platform to announce the approval of the Law for the Promotion and Protection of Investments that would extend broad privileges to investors. That included giving recourse to all foreign investors, regardless of their country of origin, to sue Honduras in the event that it carried out measures that could affect their investment.



The approval of the Law for the Promotion and Protection of Investments, published in the official newspaper *La Gaceta* on July 15, 2011<sup>64</sup> (analyzed in more detail in section 3.1.3: “Law for the Promotion and Protection of Investments”), was part of legislative changes promoted to favor private investment, “aiming to make Honduras one of the most attractive countries for investment in Latin America.”<sup>65</sup> Critics of the coup policy,

61 Central American Data (January 24, 2011). “Honduras is open for business”. [https://www.centralamericanadata.com/es/article/home/Honduras\\_is\\_open\\_for\\_business](https://www.centralamericanadata.com/es/article/home/Honduras_is_open_for_business).

62 Montenegro M. (April 10, 2011). Honduras is Open for Business will change the country's history. *La Prensa*. <https://www.laprensa.hn/honduras/honduras-is-open-for-business-cambiará-la-historia-del-pais-HELP542621>

63 La Prensa (May 5, 2011). The best of “Honduras is Open for Business” <https://www.laprensa.hn/honduras/lo-mejor-del-honduras-is-open-for-business-HBLP539925>; Observatorio de multinacionales en América Latina. (September 10, 2011). *Honduras as a destination for foreign direct investment*. <https://omal.info/spip.php?article700>

64 Law for the Promotion and Protection of Investments. Decree 51-2011. (July 15, 2011). *La Gaceta* N.º 32,568. <https://honduras.eregulations.org/media/Ley%20para%20la%20promoci%C3%B3n%20y%20protecci%C3%B3n%20de%20inversiones.pdf>

65 La Prensa (April 28, 2011). *Congreso Nacional aprobará ley de inversiones*. <https://www.laprensa.hn/honduras/congreso-nacional-aprobara-ley-de-inversiones-PELP543840>

such as trade unionist Carlos H. Reyes, saw it as a way to “complete the sale of the country” and “continue destroying the national producer.”<sup>66</sup> The Black Fraternal Organization of Honduras (OFRANEH) in the run-up to the start of the *Honduras Is Open for Business* event foresaw:

“The Law for the Promotion of Investments will serve to increase the number of cases that are being heard in national and international courts against the State of Honduras for non-compliance with its commitments. Soon we will be regulars at the International Centre for Settlement of Investment Disputes, known as ICSID, where those invited to the investor symposium will seek protection.”<sup>67</sup>

Outside the event site were, among other organizations, the FNRP and the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), which issued a communiqué opposing Porfirio Lobo’s plan:

“It is nothing more than the consolidation of colonialism and capitalist plundering, even worse than the signed FTAs, with which the regime intends to accelerate even further the delivery of the country to foreign transnationals for the usufruct and exploitation of natural resources; creating, in addition, a tax haven in which drug trafficking would have a privileged place.”<sup>68</sup>

The demonstrators were tear gassed and subjected to police repression. Eight people were arrested, among them three members of COPINH and three from the youth organization Los Necios.

66 Reyes, C. (May 4, 2011). The development of a country like Honduras does not depend on business. Alainet. <https://www.alainet.org/es/active/46301>

67 OFRANEH. (May 5, 2011). Honduras Open for Business: banana republic auction. [https://movimientos.org/es/honduras/show\\_text.php3%3Fkey%3D19275](https://movimientos.org/es/honduras/show_text.php3%3Fkey%3D19275)

68 COPINH. (May 6, 2011) Stop colonialism, stop selling out Honduras! Urgent press release. <https://hondurashumanrights.wordpress.com/2011/05/06/regime-continues-to-repress-openly-the-people-of-honduras/>

The main objective of the *Honduras Is Open for Business* event and the national and international legal architecture being announced was to provide total security to national and foreign capital, especially in the economic sectors established as a priority by the National Plan. This has not only happened in Honduras, but throughout Latin America. Since the 1990s, countries agreed to sign a series of international treaties specifically for the protection of foreign investments, while at the same time reforming their legal apparatus (laws and even constitutions) to include clauses that would give total freedom to capital (legal, exchange, customs and tax freedom), while restricting the regulatory capacity of states in defense of human rights, labor rights and the environment.

In the case of Honduras, a combination of four legal instruments exist that restrict the regulatory capacity of the State, while granting extraordinary privileges to investors. Poised like instruments, these four instruments directly attack the possibility of the Honduran state to act in favor of the people. These are legal spearheads, complex legal frameworks that protect capital in situations of economic, social or environmental crisis that may modify the expected profitability of investments. These instruments guaranteeing corporate profit at the expense of indigenous, poor, peasant or urban populations, are comprised of the following:

1. Bilateral treaties for the protection and promotion of foreign investments (BITs);
2. Free trade agreements (FTAs) that include investment protection and arbitration;
3. The Investment Promotion and Protection Law of 2011;
4. Contracts between the State and companies, endorsed by post-2009 laws.



The four legal instruments incorporate arbitration. That is, they allow foreign investors to sue the State in case their investment is affected by changes in laws, contracts or by any State regulation. Their ammunition is the Investor-State Dispute Settlement (ISDS) mechanism – the mechanism that gives the investor the ability to resort to international arbitration against the public authority, bypassing the national justice system.

### **3.1. Investor-State Dispute Settlement Mechanism (ISDS)**

The ISDS mechanism allows foreign investors to bypass national courts and submit their claims against the State before an international investment arbitration tribunal. For this reason, arbitration is considered a “supranational” mechanism: creating a system of “parallel justice” at the international level that ignores, and often overrules, national justice systems.<sup>69</sup>

The World Bank’s ICSID is the most widely used arbitration tribunal by investors globally, but there are others such as the United Nations Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce and the Permanent Court of Arbitration at the Hague, among many others. ICSID is only the tip of the iceberg of the ISDS problem: it is the most used institution, but leaving it does not disable any of the other arbitration centers. When we look beyond ICSID and the tribunals, we find the real problem: the substantive clauses, i.e., the rights (or privileges) laid out for investors in a set of clauses in FTAs, BITs and investment laws and contracts that grant them preferential treatment.

#### **Honduras and its “reservations” on joining ICSID: An unresolved problem of legal sovereignty**

The history of Honduras as a member of ICSID is striking in legal terms. In April 2023, the Government of Xiomara Castro created the Presidential Commission for the Defense of Sovereignty and Territory, which issued a

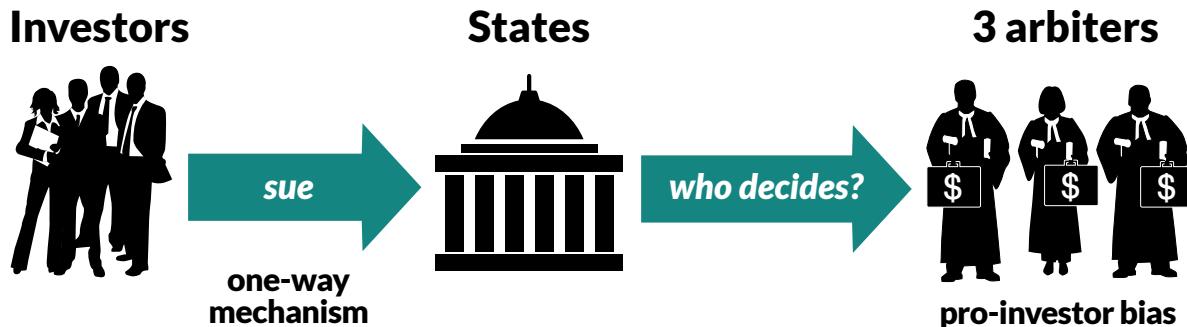
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69 A clear case of disregard of national justice by an arbitration tribunal is the Chevron II vs. Ecuador case, where the tribunal ruled in favor of the company indicating that there is overwhelming evidence that the material presented by the victims in the Lago Agrio region against Chevron was fraudulent. See: <https://isds-americalatina.org/perfiles-de-paises/ecuador/>

communiqué assuring that “ICSID has ignored the legal reservation registered by the State of Honduras when acceding to the Convention.”<sup>70</sup> Referring to Decree No. 41-88 published in the official gazette of August 1988, it argued that investors are obliged to exhaust domestic judicial remedies before resorting to ICSID and that arbitration would be the last resort.<sup>71</sup>

However, the ICSID Secretariat has not registered Honduras’ “reservation” as part of its files and, in practice so far, the decree has had no effect. In two of the ongoing claims against Honduras (JLL Capital and Autopistas del Atlántico), the arbitration panel has rejected the State of Honduras’ argument against pursuing these cases based on its reservation in Decree 41-88.<sup>72</sup>

What is the arbitration process like? Claims are submitted by the law firms representing the investors to an arbitration center selected by the investors. An arbitration panel is formed especially for each case. The panels, or arbitral tribunals, are composed of three highly paid corporate lawyers (who in this case serve as arbitrators) who generally meet without witnesses and are not accountable to anyone.



70 Romero, F. (June 2, 2023). Honduras says ICSID acted “fraudulently” in multimillion-dollar lawsuit. Bloomberg Line. <https://www.bloomberglinea.com/2023/06/02/honduras-dice-que-el-ciadi-actuo-de-forma-fraudulenta-en-demanda-millonaria/>

71 Decree 41-88. (August 4, 1988). La Gaceta No. 27,431.

72 Bohmer, L. (April 5, 2024). ICSID tribunal rejects Honduras’ argument that claims manifestly lack legal merit due to investor’s failure to exhaust local remedies. <https://www.iareporter.com/articles/icsid-tribunal-declines-to-decide-honduras-exhaustion-of-local-remedies-argument-in-expedited-proceedings/>

Bohmer, L. (December 29, 2023). ICSID tribunal dismisses Rule 41 objection in financial services dispute with Honduras. <https://www.iareporter.com/articles/icsid-tribunal-dismisses-rule-41-objection-in-financial-services-dispute-with-honduras/>

This type of tribunal is nothing like a national justice system, since the requirements made of arbitrators are much laxer than those put on national judges.<sup>73</sup> Each case is unique, each panel determines the costs to be paid for each situation. Moreover, because they are *ad hoc* arbitration panels for each case, there are tribunal awards (the arbitrators' "decisions") that are often contradictory when it comes to tribunals deciding on cases of the same nature (for example, a state policy of freezing public tariffs in the context of an economic crisis). This level of inconsistency shows how arbitrators are valued as "super-powerful beings" who define the fate of state policies if they somehow affect an investor's anticipated profits. For this reason, George Kahale III, an international arbitrator and member of a US law firm, states:

"Why do I call arbitration the Wild West of international practice (...) There are really no hard and fast rules. Briefs, motions, oral arguments, discovery and trials are nothing like what you see in federal court."<sup>74</sup>

Arbitration panels are not obliged to consider the human rights of peoples affected by investments, but rather rule on violations of investors' rights. Some of these rights (or privileges) violated by public policies are summarized in these clauses, included in all BITs and FTAs with investment protection:

- Direct expropriation and indirect expropriation: Investors are protected against direct expropriation of property, as well as indirect expropriation, interpreted as any state action that reduces the investor's expected profit. As a result, companies can sue governments for enforcing environmental, health or other public interest laws or measures arising from democratic or judicial processes, and even from economic, political and health crises, such as the COVID-19 pandemic.
- Fair and equitable treatment: This is understood as the State's obligation to provide the investor with due process, "fair", "impartial", "legitimate" treatment, and to avoid actions that frustrate "legitimate expectations" of profit. It is one of the most controversial standards included in most treaties; in fact, it is present in almost 95%

73 Olivet, C. and Ghiotto, L. (2021). Parallel Justice: How the investment protection system puts the independence of the Judiciary at risk in Latin America, *Transnational Institute*. [https://isds-americalatina.org/wp-content/uploads/2023/04/justicia\\_paralela\\_esp.pdf](https://isds-americalatina.org/wp-content/uploads/2023/04/justicia_paralela_esp.pdf)

74 George Kahale III (2018). ISDS: The Wild, Wild West of International Law and Arbitration. Lecture given at Brooklyn Law School. <https://d20qsj1r5k97qe.cloudfront.net/news-attachments/ISDS-The-Wild-Wild-West-of-International-Law-and-Arbitration.pdf>

of investment treaties and almost 83% of all treaty-based investor-state arbitrations have involved claims based on this standard.<sup>75</sup> Notoriously, it is a principle that lacks a precise definition. Consequently, tribunals have sought to formulate a definition when interpreting the provision, increasingly expanding its scope and content over time, regardless of the diverse histories, cultures and value systems of a given country.

- National treatment and most-favored-nation treatment: Governments are required to treat foreign investors no less favorably than domestic investors and those from a third country. While this is presented as a basic principle of fairness, it precludes the possibility for governments to apply national economic strategies to stimulate or protect domestic economic activities.
- Full protection and security: This standard applies to negative impacts on investments, whether from physical or legal acts, which may be allegedly from the action or lack of action by the State or third parties, which could include communities or workers standing up against violations of their rights by the investor. There are examples of claims where an investor invokes this standard, demanding that the State guarantee the protection of its investment in the face of protests by local people affected by its projects.<sup>76</sup>

### **3.1.1. First legal instrument: bilateral investment treaties**

The first instrument comes in the form of the BITs that incorporate clauses such as those mentioned above, which protect foreign investors and allow them to resort to international arbitration. BITs are short treaties, usually seven or eight pages long. If we compare those signed by Honduras with other BITs in existence, we will find that they are practically the same. All BITs were conceived to grant legal security to transnational capital, so they provide a set of privileges for investors, while tying the hands of states in terms of their regulatory capacity.

75 Sarmiento F. and Nikiema S. (November 2022). Fair and Equitable Treatment: Why it is important and what can be done. *International Institute for Sustainable Development*. <https://www.iisd.org/system/files/2022-11/fair-equitable-treatment-es.pdf>

76 Moore, E. and Moore, J. (September 18, 2020). When Police Repression is Not Enough: A U.S. Corporation is Suing Guatemala to Crush Local Mining Opposition. *Inequality*. <https://inequality.org/research/mining-corporation-suing-guatemala/>

Both BITs and the provisions of the investment chapters in FTAs have been used by foreign investors to sue the Honduran State, although there has been a tendency towards the greater use of FTAs for this purpose.

The interesting thing about BITs is that, even if a country decides to terminate one of these treaties, upon termination a sunset clause is activated which means the treaty remains in force for 5, 10, 15 or even 20 more years. This clause is better known as the “zombie clause”, because even if an attempt is made to kill the treaty, it rises from its grave, giving continued coverage to investors for a period of time.

The BITs signed by Honduras have been invoked by investors in two lawsuits: in one concerning the BIT with Spain and in the other the BIT signed with the United States.

### **3.1.2. Second legal instrument: free trade agreements**

FTAs go far beyond trade, as they deal with issues that exceed discussions on tariffs. They incorporate chapters such as intellectual property rights, services, government procurement and, of course, investment protection. The investment chapter could be seen as a BIT within an FTA, since it is a copy of the same clauses. These FTAs also incorporate the ISDS mechanism that enables international arbitration.

Honduras currently has twelve FTAs in force. Rather than pursuing further BITs, since the turn of the millennium it has begun to sign FTAs and continues on this path. President Xiomara Castro has mentioned some interest in renegotiating the CAFTA-DR, but this has not materialized. At the moment, Honduras is renegotiating the existing FTA with South Korea and negotiations for an FTA with China have begun.<sup>77</sup>

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<sup>77</sup> Hondudiario (May 9, 2022). Honduras seeks to renegotiate CAFTA: “The ability to compete has been lost”. Bilaterals. <https://www.bilaterals.org/?honduras-busca-renegociar-el-cafta&lang=en>  
La Tribuna (November 26, 2023). Honduras starts FTA negotiations with South Korea and China. Bilaterals. <https://www.bilaterals.org/?honduras-arrancan-rondas-de&lang=en>

**Table 1. BITs signed with Honduras currently in force**

Country	Effective date	Sunset period (“Zombie Clause”)
<b>Initial period nearly over, can be terminated</b>		
Chile	10/01/2002	15 years
United States	11/07/2001	10 years
France	08/03/2001	15 years
Germany	27/05/1998	20 years
Great Britain	08/03/1995	20 years
<b>Initial period ended, automatically renewed</b>		
Netherlands	01/09/2002	15 years
Spain	23/05/1996	10 years
Switzerland	31/08/1994	10 years

Source: Authors' own elaboration based on data from UNCTAD's Investment Policy Hub.

**Table 2. Trade agreements with investment protection chapters**

Trade agreement	Year came into force
FTA between Central America and the United Kingdom	2021
FTA between Central America and South Korea	2019
FTA with Peru	2017
FTA with Canada	2014
Central America-Mexico FTA	2012
FTA between Colombia, El Salvador, Guatemala and Honduras	2009
Treaty on investment and trade in services between Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.	2008
FTA between El Salvador, Honduras and Taiwan	2008
CAFTA-DR	2006
FTA between Central America and Panama	2009 <sup>78</sup>
FTA between Central America and Chile	2002
FTA between Central America and the Dominican Republic	2001

Source: Authors' own elaboration based on data from UNCTAD's Investment Policy Hub.

<sup>78</sup> This treaty was signed by different countries over several years, in the case of Honduras it was signed in 2007 and entered into force in 2009: <http://www.sice.oas.org/trade/>

FTAs have been invoked eight times by investors suing Honduras: four times through CAFTA-DR; twice through the Central America-Panama FTA; and twice through the Central America-Mexico FTA.

### **3.1.2.1. CAFTA-DR and its implementation laws**

CAFTA-DR was an initiative of the U.S. government under George W. Bush. Negotiations were completed in 2003; it was signed in 2004 then ratified by El Salvador in 2004 and by Honduras and other countries in 2005, despite fierce opposition from popular sectors and the middle classes.<sup>79</sup>

CAFTA-DR includes a Chapter 10 on investment that allows U.S. companies to sue Central American countries in international arbitration centers. In addition, the U.S. insisted that CAFTA-DR include so-called “implementation laws” that obliged the signatory countries of the treaty to adapt their domestic legislation in the areas of services, telecommunications and intellectual property. The CAFTA-DR implementation laws were laid out in Decree No. 16-2006, which was justified by the supposed need to eliminate “any possible contradiction that could create confusion and legal insecurity” for investors, since such adjustments would improve “the business climate, establishing clear rules and legal certainty for all economic agents, enhancing the opportunities of the Treaty”.<sup>80</sup> This opened the door for the commercial and investment interests of U.S. corporations, and their allies among economic elites in each of the countries of the region.

In the case of Honduras the implementation laws consisted mainly of signing and ratifying a series of international intellectual property conventions, including the controversial International Convention for the Protection of New Varieties of Plants (1991) (UPOV) that denies peasant communities the right to protect their biodiversity and native seeds, among other detriments.<sup>81</sup> Honduras also had to sign other international treaties related

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79 The Central American Socialist (November 9, 2015). *Chronology of the Popular Protest against the FTA (2002-2006)*.

<https://elsoca.org/index.php/america-central/centroamerica/3862-centroamerica-cronologia-de-la-protesta-popular-contra-el-tlc-2002-2006>

80 *Law for the Implementation of the Free Trade Agreement*, Dominican Republic, Central America, United States (March 24, 2006). Decree 16-2006 La Gaceta N.º 30,961. [https://www.tsc.gob.hn/web/leyes/Ley%20de%20Implementacion%20de%20Tratado%20de%20Libre%20Comercio%20Decreto%20\(16-2006\)%20\(07\).pdf](https://www.tsc.gob.hn/web/leyes/Ley%20de%20Implementacion%20de%20Tratado%20de%20Libre%20Comercio%20Decreto%20(16-2006)%20(07).pdf)

81 Gaia/Grain (June 21, 1998). *Ten reasons to say NO to UPOV*. <https://grain.org/es/article/entries/847-diez-razones-para-decir-no-a-upov>

to the protection of intellectual property<sup>82</sup> that negatively impact small producers and traders and benefit transnational corporations.

### 3.1.2.2. Resistance to CAFTA-DR

In Honduras, as in the rest of the countries that negotiated CAFTA-DR, social organizations were excluded from the process. Only neoliberal technocrats and businessmen were consulted in the negotiations. For their part, Honduran organizations began coordinating among themselves to resist the signing of the treaty, building alliances with Mexican and U.S. movements to learn from the effects of the North American Free Trade Agreement (NAFTA) on campesinos and workers.

Few previous social protest events in Central America had the characteristics of the mobilizations against CAFTA-DR. For five consecutive years, Central America experienced a climate of political conflict, with growing social unrest beginning in 2002, reaching a climax in 2005 and then declining in 2006.<sup>83</sup> One of the characteristics of the mobilizations against CAFTA-DR in Honduras is that they were mainly carried out by unions. CAFTA-DR was perceived as a threat to the rights of union members, both in the central unions and in campesino, teacher, indigenous, Afro-descendant and other organizations, integrated as they were into the Popular Bloc and the National Coordinating Committee of Popular Resistance. These organizations expressed full frontal opposition to the treaty, considering it "an instrument of domination by transnational corporations and the oligarchies of the region".<sup>84</sup>

In 2003, the Popular Bloc, COPINH, OFRANEH, Red Comal, unions and other organizations formed the National Coordinating Committee of Popular Resistance (CNRP), which came together at the continental level as part of the Hemispheric Social Alliance. These organizations opposed the FTAs head-on and proposed an alternative development framework.<sup>85</sup> Non-governmental organizations (NGOs) also forged

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82 Other international treaties that Honduras had to sign: Patent Cooperation Treaty, as revised and amended (1970); Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980); Convention on the Distribution of Program-Carrying Satellite Signals (1974); Trademark Law Treaty (1994); Patent Law Treaty (2000); Hague Agreement Concerning the International Deposit of Industrial Designs (1999); Protocol to the Madrid Agreement Concerning the International Registration of Marks (1989).

83 Abarca, C. (November 9, 2015). Chronology of the Popular Protest against the FTA (2002-2006). *The Central American Socialist*. <https://elsoca.org/index.php/america-central/centroamerica/3862-centroamerica-cronologia-de-la-protesta-popular-contra-el-tlc-2002-2006>.

84 Brown, S. (April 26, 2016). Civil society and trade agreements in Honduras: A perspective from sustainable human development. *National Autonomous University of Honduras*. [https://issuu.com/doctordoccssgd/docs/tesisvirgiliobrown13102016\\_2](https://issuu.com/doctordoccssgd/docs/tesisvirgiliobrown13102016_2).

85 Hemispheric Social Alliance (January 2003). *El ALCA al desnudo: Críticas al texto borrador del Área de Libre Comercio de las Américas de noviembre de 2002* (The FTAA in the Buff: Criticisms of the November 2002 draft text of the Free Trade Area of the Americas). [https://www.iatp.org/sites/default/files/ALCA\\_al\\_Desnudo\\_El.pdf](https://www.iatp.org/sites/default/files/ALCA_al_Desnudo_El.pdf)

alliances with regional networks such as the Honduran Coalition for Citizen Action (CHAAC by its initials in Spanish), Central America for Dialogue (CAD), and hemispheric initiatives such as the Latin American Association of Promotion Organizations (ALOP) and the Mesoamerican Initiative for Trade, Integration and Sustainable Development (CID).<sup>86</sup>

On March 2, 2005, 57 civic organizations who were members of the Honduran People's Congress signed a statement against the treaty that was sent to congress. Two days later, the Honduran people condemned approval of CAFTA-DR with a national mobilization. On May 13, 2005, hundreds of indigenous Lenca people and members of COPINH protested in front of the US embassy. On May 30, thousands of people mobilized in Intibucá. Subsequently, indigenous people took the main street in front of the U.S. embassy. On June 28, 2005, CHAAC assumed a lead role in promoting the Continental Campaign against the Free Trade Area of the Americas.<sup>87</sup>

"More popular mobilizations are coming. CAFTA will only bring poverty to the poor."

- *Salvador Zúñiga, indigenous leader, 2005.*<sup>88</sup>

In the face of protests, a campaign of contempt and criminalization of social movements began. The efforts of social organizations were not enough to stop the ratification of CAFTA-DR in all the party countries. The negotiations were kept in the dark even for the vast majority of congresspeople. In the end it was ratified "on the fly" and according to the agenda of big business. The negotiators dedicated themselves to threatening and blackmailing the population by saying that without CAFTA-DR there would be fewer

86 These organizations were supported by several donor agencies (Christian Aid, Trocaire, Bread for the World, Oxfam, to name a few). They were critical of CAFTA-DR but some chose to try to advocate for a fairer agreement.

87 Abarca (2015), see note no.50.

88 Cuevas, F. (March 7, 2005). Highway blockade in Honduras in protest against CAFTA. LMT Online. <https://www.lmtonline.com/lmtenespanol/article/Bloquean-carretera-en-Honduras-en-protesta-por-10268815.php>

jobs and more migration.<sup>89</sup> Today we see that the situation,<sup>90</sup> particularly in Honduras, Guatemala and El Salvador, has been the opposite: migration has increased dramatically since the entry into force of CAFTA-DR.

### **3.1.2.3. The Central America-Panama Free Trade Agreement: a tool of the elites**

The FTA between Central America and Panama was signed by Honduras by then President Manuel Zelaya in 2007, prior to the coup d'état. It entered into force in 2009.<sup>91</sup> The treaty consolidated “the presence of branches of Panamanian financial institutions in the Honduran market, including the insurance and reinsurance sector for risks related to maritime transport and international transit.”<sup>92</sup> At the same time, it has allowed some Honduran elites to sue the country.

As Insight Crime describes, “The traditional, agro-exporting and industrial elites that rule in places like Guatemala, El Salvador and Nicaragua are less prominent in Honduras, mostly due to the country’s long history as an enclave economy dominated by multinational corporations: the original Banana Republic. Instead, the country’s most powerful economic elites have emerged from the service, banking, media and telecommunications sectors. They are called transnational elites because many of them are first- or second-generation immigrants from the Middle East and Eastern Europe and rely on international business to accumulate capital.”<sup>93</sup>

89 On the promises made by governments when negotiating and signing FTAs, see: Ghiotto, L. (2020) “Las promesas incumplidas de los Tratados de Libre Comercio y de Inversión en América Latina: un balance a 25 años”. In Ghiotto, L. and Laterra, P. (eds.) *25 years of trade and investment treaties in Latin America: analysis and critical perspectives*. El Colectivo; Rosa Luxemburg Foundation. <https://www.fgep.org/wp-content/uploads/2022/02/25-anos-de-tratados-de-libre-comercio-en-America-Latina-1.pdf>

90 With CAFTA-DR in place, the Central American CAFTA-DR Monitoring Network began operating, comprised of the CER-Ixim Rural Studies Collective of Guatemala, the Investment and Trade Research Center (CEICOM) of El Salvador, the Honduran Citizen Action Coalition (CHAAC), the Nicaraguan Community Trade Network (RENICC) and the National Liaison Commission (CNE) of Costa Rica. This network produced several studies until the last decade. See: Red Centroamericana de Monitoreo del DR-CAFTA (Central American DR-CAFTA Monitoring Network) (November 21, 2011). Central America, markets or nations? Impactos del DR-CAFTA en la región a cinco años de vigencia. OMAL. <https://omal.info/spip.php?article558>.

91 La Estrella de Panamá (October 10, 2009). FTA between Panama and Honduras is in force. <https://www.laestrella.com.pa/economia/tlc-panama-vigencia-honduras-HKLE212014>

92 Ministry of Commerce and Industries, Commercial and Investment Relations with Panama (February 9, 2021). *Country Profile: Honduras*. <https://intelcom.gob.pa/doc/otros/Ficha%20Honduras.pdf>

93 Dudley, S. (April 9, 2016). *Honduras Elites and Organized Crime*. <https://insightcrime.org/investigations/honduras-elites-and-organized-crime-introduction/>.

Unlike in other parts of Central America there is a certain class of Honduran elite with longstanding transnational connections. The powerful Rosenthal families of the now ousted Grupo Continental and Atala Faraj of Grupo Ficohsa,<sup>94</sup> who have dominated the financial sector in Honduras, structured their investments using companies in Panama, a country known for being a tax haven and a jurisdiction that provides secrecy to businesses.<sup>95</sup>

Others, such as Lenir Pérez and his wife Ana Facussé (daughter of Miguel Facussé, who was known as one of the richest men in Honduras<sup>96</sup>), have organized their investments in the mining sector through companies registered in Panama. This is the case of NE Holdings Inc. which has operated from Panama in order to facilitate business with the US steel company Nucor, although its deal with the company was not consolidated due to conflicts in the municipality of Tocoa over the iron ore project in the community of Guapinol.<sup>97</sup>

The disclosure of the *Panama Papers* revealed links between offshore companies in Panama with politicians such as former Honduran President Porfirio Lobo and his wife,<sup>98</sup> as well as Nasry Asfura and Ricardo Alvarez, former mayors of Tegucigalpa.<sup>99</sup> The company Potencia y Energía de Mesoamérica S.A. (PEMSA) is also registered in Panama,<sup>100</sup> of which David Castillo was previously president and director<sup>101</sup> – a man who is now under arrest for his role in the murder of Honduran environmental leader Berta Cáceres. This company invested in solar projects in southern Honduras before being transferred to Scatec and Norfund, who are now suing the country.<sup>102</sup>

94 Avila, J., Bermúdez L., Ronderos, M. (October 3, 2021). A tale of two Tegucigalpa mayors and their offshore companies in Panama. <https://contracorriente.red/en/2021/10/03/a-tale-of-two-mayors-of-tegucigalpa-and-their-offshores-in-panama/islands/>

95 Tax Justice Network (n.d.). Panama. <https://taxjustice.net/country-profiles/panama/>

96 Wilkinson, T. (June 23, 2015). Miguel Facusse dies at 90; colorful, ruthless Honduran tycoon. LA Times. <https://www.latimes.com/local/obituaries/la-me-miguel-facusse-20150624-story.html>

97 Avila, J. and Mackey, D. (September 11, 2020). The hidden connection of a U.S. steelmaker to the controversial Los Pinares mine in Honduras. <https://www.elclip.org/la-conexion-escondida-de-una siderurgica-de-ee-uu-con-la-polemica-mina-de-los-pinares-en-honduras/?lang=en>

98 Ávila, J., Bermúdez L., Ronderos, M. (October 3, 2021). Pepe Lobo's secret offshore companies. <https://contracorriente.red/en/2021/10/03/pepe-lobos-secret-offshore-companies/>

99 Avila, J., Bermudez L., Ronderos, M. (October 3, 2021). A tale of two Tegucigalpa mayors and their offshore companies in Panama. <https://contracorriente.red/en/2021/10/03/a-tale-of-two-mayors-of-tegucigalpa-and-their-offshores-in-panama/islands/>

100 Opencorporates (July 4, 2024). Potencia y Energía de Mesoamérica S.A. <https://opencorporates.com/companies/pa/719303>

101 Ibid.

102 Perdomo, M. (May 5, 2023). Empresas noruegas ligadas a David Castillo y Los Cachiros demandan a Honduras ante el CIADI, alerta Copinh. Criterio. <https://criterio.hn/empresas-noruegas-ligadas-a-david-castillo-y-los-cachiros-demandan-a-honduras-ante-el-ciadi-alerta-copinh/>

A key advantage explaining why these and other Honduran businessmen may prefer to have a foothold in Panama is that they can use the Central America-Panama FTA to sue their own country through ISDS arbitration, just as Inversiones Continental (Panamá) S.A. and Inversiones y Desarrollos Energéticos S.A. have done.

### **3.1.3. Third legal instrument: Law for the Promotion and Protection of Investments**

The Law for the Promotion and Protection of Investments of 2011, part of the *Honduras Is Open for Business* strategy, provides extra coverage for investors, guaranteeing them legal security under both national law and international treaties. It incorporates several extraordinary rights for foreign investors, which had already been established in international treaties signed in the previous two decades.

In its Title I, Article 1 explicitly states that “All natural or legal persons, national or foreign, who acquire assets in Honduras may benefit from the present law.”<sup>103</sup> So while international treaties are negotiated bilaterally or by groups of countries, with a view to the conditions granted to each, in this law these privileges are granted to investors from all countries equally. That is to say, any investor from any part of the world can take advantage of the benefits of the law, whether or not there is a BIT previously in force with that country.

The central elements of the law are:

- Any movement of capital is understood as an investment, “any kind of transfer to national territory” (Article 2.5);
- It provides guarantees against direct and indirect expropriation because it is understood that an expropriation is “any unilateral act of the State that, by action or omission, undermines the value of an investment” (Article 2.7);
- It provides national treatment for foreign capital, i.e. foreign capital may not be discriminated against because it is foreign, or receive less favorable treatment than a national investor (Article 4.1);
- It enables investors to freely transfer money abroad, including profits or dividends, without restrictions (Article 4.3);

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103 Law for the Promotion and Protection of Investments. See note 64.

- It grants stability contracts for investments of more than US\$2 million (including public-private partnerships), which provides security for the investor since it guarantees that tax conditions will not be modified following the signing of any contract (Articles 19 and 20);
- It enables all foreign investors to initiate claims in international arbitration, both for private investments and in contracts between private companies and the state. These claims may be brought at ICSID or at any other national or foreign arbitration or conciliation center (Articles 25 and 26).

So far, Honduras has received three investor lawsuits based on this law: Norfund & Norfund KLP Investments AS, Scatec ASA, and most recently from International Container Terminal Services Inc. in August 2024.

In short, as long as this law exists, any investor from anywhere in the world can sue Honduras in any international arbitral tribunal. This is a reality, even with Honduras' departure from ICSID or if the Government decides to terminate all its existing investment treaties.

### **3.1.4. Fourth legal instrument: Contracts**

Contracts between states and companies are documents that, despite being signed by governments, are not usually made public. They are often contracts between corporations controlled by the state and a foreign company, which is why they are presented as "contracts between private parties".

Contracts usually have special conditions depending on the sector in which they are signed. For example, some sectors are considered strategic by the state and therefore it might grant better conditions for a particular group of investors. For example, this often happens in the hydrocarbon sector, in the extraction of certain minerals or in relation to certain infrastructure. The opacity and imbalance in the negotiation capacity between companies and small countries often makes the process very turbid and complex. For example, in February 2024, renowned arbitrator Alexis Mourre, president of the International Court of Arbitration of the International Chamber of Commerce, stated that developing countries with little negotiating capacity usually enter into these contracts with powerful multinational companies, in addition to cases of corruption that also jeopardize the contracts being negotiated in the public interest.<sup>104</sup>

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104 AFTINET. (2024, February 1). International Chamber of Commerce former arbitrator, says ISDS has "lost battle of public opinion" and "legitimacy", <https://www.bilaterals.org/?international-chamber-of-commerce-49848&lang=en>.

In recent years, state-company contracts have begun to include the ISDS mechanism, including without congressional approval or public review. The result has been that about 10% of arbitration claims against states worldwide derive from contractual agreements.<sup>105</sup>

In the case of Honduras:

- Roughly a third of the claims it faces have invoked contracts (6 out of 19);
- Three claims were filed before the coup d'état: two by Astaldi S.p.A. and one by Elsamex;
- Of the claims filed after the coup d'état, all are related to the privatization of public services and infrastructure: electric power distribution, highway management, construction, transportation and airport management; operation of a port.
- The contracts of Autopistas del Atlántico and Palmerola International Airport have been criticized for being highly unfavorable to the public treasury and there have been strong protests by the affected populations in the cases of Autopistas del Atlántico and Eléctricas de Medellín Ingeniería y Servicios S.A.S.;
- In at least three of the public-private partnerships, there is evidence of non-compliance, irregularities and accusations of corruption (Autopistas del Atlántico, Palmerola International Airport, and Eléctricas de Medellín Ingeniería y Servicios S.A.S.).
- The claim from Operadora Portuarias Centroamericana, S.A. de C.V. was filed in August 2024 before Honduras's decision to withdraw from ICSID came into effect.

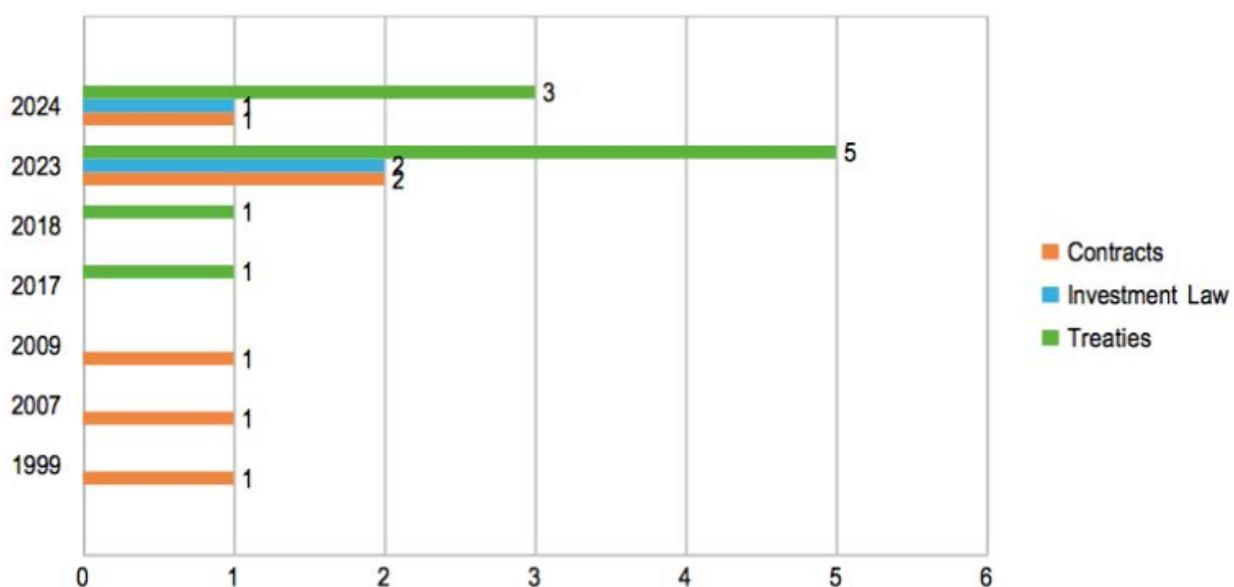
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105 AFTINET. Ibid.

## 4. Supranational arbitration claims and Mafia-style investments

Honduras was the second most sued country in Latin America (only surpassed by Mexico)<sup>106</sup> during 2023. Until then it had faced very few ISDS arbitration claims, just five between 1999 and 2018. But it received nine claims in 2023, to which another was added in the first half of 2024 and then four more in the run-up to Honduras' exit from ICSID in August 2024. There are currently 19 international arbitration claims against Honduras.

**Figure 1. Lawsuits against Honduras by year, in total numbers**



Source: Authors' own elaboration based on data from UNCTAD Investment Policy Hub, ICSID and journalistic sources.

### 4.1. Legal basis, countries of origin and economic sectors of the claims

Of the 19 ISDS claims received by Honduras to date, ten were based on treaties involving investment protection, six based on contracts between the state and foreign investors and three based on the Investment Promotion and Protection Law of 2011.<sup>107</sup>

<sup>106</sup> ICSID Global (2024). *Mexico and Honduras, the countries most sued in ICSID in 2023*. <https://ciarglobal.com/mexico-y-honduras-los-estados-mas-demandados-en-ciadi-en-2023/>

<sup>107</sup> This is the number of claims that were disclosed, but there could be others, especially contract-based claims. It is difficult to know if there are others, as the system for resolving these disputes is even more opaque than that for treaty-based claims, i.e. the number of claims may be even higher.

All claims were registered with ICSID (except for one which was discontinued and no choice of forum was ever made) and the majority of investors bringing claims are from industrialized countries.

#### **4.1.1. Treaty-based claims**

As of the end of 2023, of the ten treaty claims Honduras has received all but the first, filed in 2017 by the Gabourel Family Trust, remained pending. The Gabourel lawsuit, in which the plaintiffs were seeking more than US\$250 million, alleging that the Honduran state had illegally expropriated land intended for the construction of an airport on the island of Utila, was discontinued in 2019 by an agreement between the parties. The settlement reached is not public, but according to media reports the matter was resolved to “mutual satisfaction”.<sup>108</sup>

Regarding the nine pending treaty-based claims, the amount claimed by investors totals US\$13.115 billion, which represents more than three times the budget that Honduras allocated for public investment in 2024.<sup>109</sup> It should be noted that we do not know the amounts claimed in the last two lawsuits filed in August 2024.

#### **4.1.2. Claims based on contracts and the Law for the Promotion and Protection of Investments**

Of the nine claims based on contracts and the Law for the Promotion and Protection of Investments of 2011, three have already been resolved, all in favor of the investor. In two of these claims the amount awarded to the investor is known, and totals more than US\$13.3 million. The amounts claimed by the investors in the six lawsuits still pending total US\$589 million, according to information sources of the Attorney General’s Office. It should be noted that of the last two claims that invoked a contract and the investment law in August 2024, the amounts claimed have not been disclosed.

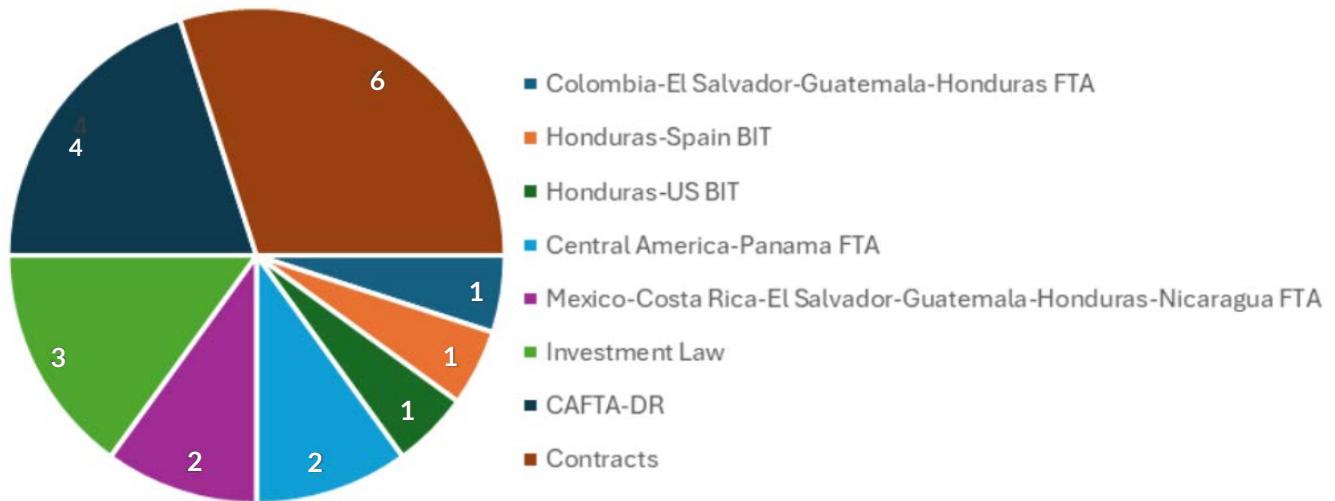
It is worth remembering that, in each of the claims, the State often has to pay the costs of the tribunal and its legal defense, in addition to the investor’s costs, in the event an award is found in favor of the investor. On average, these costs add up to about US\$5 million.

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108 Bohmer, L. (December 9, 2019). Central America Round-Up: An update on investment disputes involving Guatemala, Honduras, Nicaragua and Costa Rica. *IA Reporter*. <https://www.iareporter.com/articles/central-america-round-up-an-update-on-investment-disputes-involving-guatemala-honduras-nicaragua-and-costa-rica/>

109 Honduras Inversiones (2024). *Public Investment Budget 2024*. The budget for public investment in 2024 is 95,461 million lempiras, which as of January 1, 2024 is equivalent to 3,805 million dollars. <https://hondurasinversiones.gob.hn/presupuestoinversionpublica>

**Figure 2. Legal instruments used to sue Honduras, in total numbers**

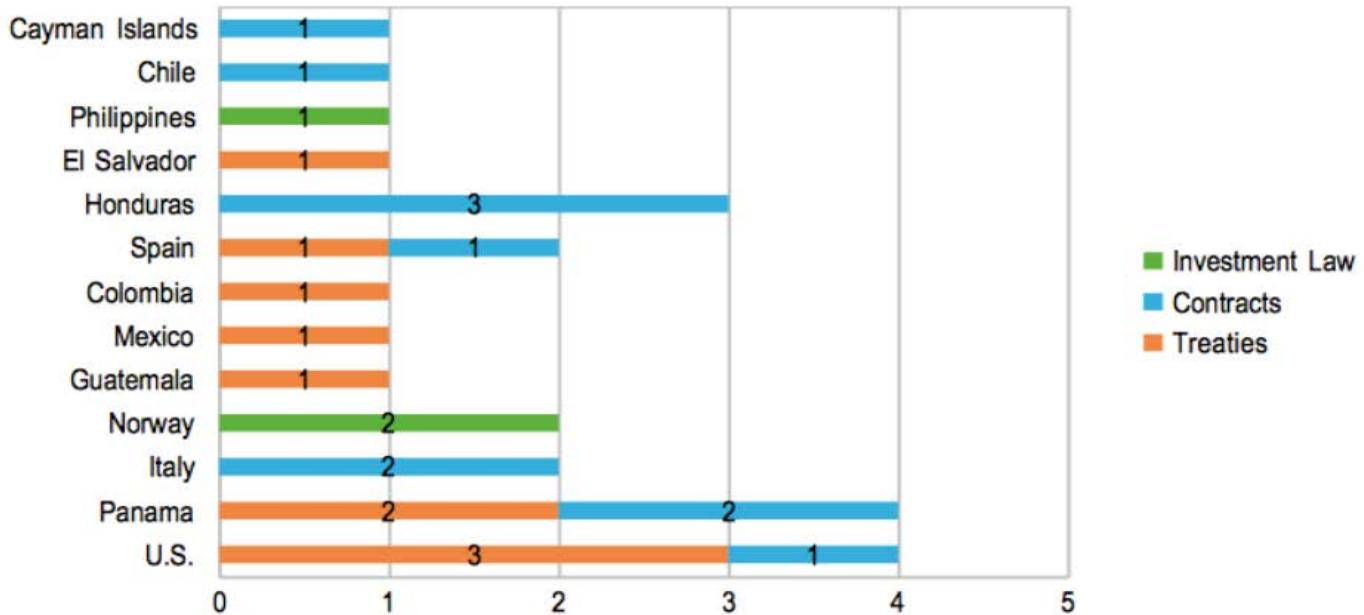


Source: Authors' own elaboration based on data from UNCTAD Investment Policy Hub, ICSID and journalistic sources.

#### 4.1.3. Countries of origin of investors bringing claims

Most of the lawsuits against Honduras were filed by investors from more industrialized countries: four are from the United States and six are European. Nine have been filed by Latin American investors. If we only consider treaty-based investors, the investors that have sued Honduras are principally from the United States, Europe and neighboring countries such as Panama, Guatemala, Mexico and Colombia. In the following sections we will review the characteristics of these particular “Latin American investors”, several of whom are Hondurans who have structured their businesses through these countries, which offer greater legal flexibility for companies. In Figure 4, we describe the countries of origin of the investors taking into account that, in some cases, more than one investor from different countries of origin are part of the project and are suing Honduras together. As a result, the total in the following figure adds up to more than the total amount of claims brought against Honduras.

**Figure 3. Countries of origin of Investors, in total numbers**



Source: Authors' own elaboration based on data from UNCTAD Investment Policy Hub, ICSID and journalistic sources.

A relevant fact is that the firms advising investors claiming against Honduras are generally the same ones: firm White & Case is advising on five treaty-based and four contract-based claims; Clifford Chance on one treaty-based and two contract-based claims; and Cremades & Associates on one treaty-based and one contract-based claim. The Honduran state, for its part, has relied on the firms Jana & Gil Dispute Resolution and Dorsey & Whitney.

As we can see, White & Case provides legal counsel to investors in nine of the lawsuits filed against Honduras; it has a particular presence in the 2023 and 2024 claims from the energy sector, in relation to ZEDE Prospera and the two claims recently filed by port operators. This is no coincidence, since this firm has spoken out publicly about the legal situation in Honduras and the recent measures taken by the government. In March 2024, White & Case lawyers published an article regarding the implications for foreign

investors of Honduras leaving ICSID. In the article the firm refers to the measures taken by the Government of Xiomara Castro as a return to an “anti-private investment” policy, as they created uncertainty and erosion of the value of investments, stating:

“Investors affected by the conduct and policies of Honduras should take active steps to assess and protect their legal and commercial interests.”<sup>110</sup>

#### **4.1.4. Economic sectors in which claims are registered**

The sectors in which claims were received are very varied: financial and real estate activities, construction, electricity and gas supply, transportation. It is noteworthy that all claims in the transportation sector were initiated on the basis of contracts.

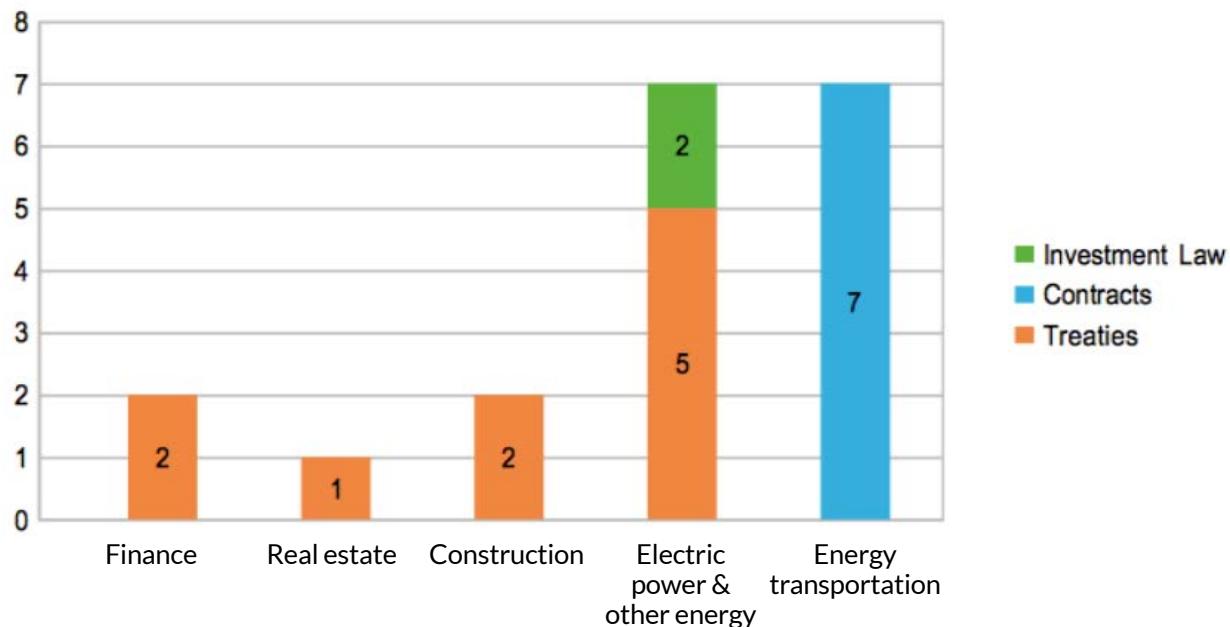
With respect to the energy sector, the seven claims registered have to do with reforms in this sector under the government of Xiomara Castro, particularly to renegotiate the price at which the state is purchasing electricity from the companies. Some companies have had to renegotiate their contracts, and more contractual changes are expected due to a reform bill in the National Congress aimed at eliminating arbitration in contracts between the State and power generators. Some arbitration lawyers perceive that the Castro administration prefers to submit disputes to the national courts.<sup>111</sup>

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110 Marchili S., Santens A., Jijón F. and San Juan E. (March 15, 2024). Honduras ICSID Denunciation and Implications for Foreign Investors. White & Case. <https://www.whitecase.com/insight-alert/honduras-icsid-denunciation-and-implications-foreign-investors?s=honduras>

111 CIAR Global (January 19, 2024). Fabián Villeda: In Honduras, the State has a growing debt with energy companies. <https://ciarglobal.com/fabian-villeda-en-honduras-el-estado-tiene-una-deuda-creciente-con-las-energeticas/>

**Figure 4. Claims by sector**



Source: Authors' own elaboration based on data from UNCTAD Investment Policy Hub, ICSID and journalistic sources.

## 4.2. The early claims

Honduras was hit late by the avalanche of lawsuits suffered by Latin American countries since the late 1990s, having received only three up to 2017. Here we refer to those early cases in order to highlight the background context for the wave of lawsuits that would arrive as of 2023.

### 4.2.1. Astaldi: unfinished works and disregard of the minimum wage

The Italian construction company Astaldi was the first to sue Honduras in arbitration. Together with the Panamanian company Columbus Latinoamericana, it filed a claim with ICSID in 1999 for breach of a contract for the rehabilitation of highways. This claim is based on the contract between the State and the investor. However, we have not seen the contract over which the lawsuit was filed because the contracts are not public, nor do we know the exact result of the lawsuit. The opacity of the system is total.

This first case has some peculiarities. For example, the arbitration tribunal was composed of three Honduran nationals, an extremely unusual situation in arbitration. In addition, the award, issued in October 2000, was never made public and to this day it remains confidential, probably due to an agreement between the State and the investors. It is not known with certainty what the tribunal's decision was; however, records indicate that it was favorable to the investors.<sup>112</sup>

Astaldi also filed a second lawsuit in December 2007, which had another peculiarity. The motive for the claim was that Honduras altered the "technical specificities" of its contract with the company, which led to Astaldi's inability to fulfill the contract for the improvement of the CA5-North highway. There were eight such "specificities", including increases in the cost of materials and technical modifications to the project, along with the increase in the national minimum wage. The company argued that this wage increase represented a modification of its profit expectations under the original contract. In fact, Astaldi refused to pay the wage increase arguing that the State "introduced in the Contract (illegitimately and illegally) an important limitation to the mechanism for recognizing the Contractor's right to price readjustment."<sup>113</sup>

Astaldi claimed US\$5.5 million. The sole arbitrator in the case, Eduardo Sancho González (Costa Rica), found the government liable in seven of the eight claims presented by the company. The only claim he dismissed was for costs incurred by Astaldi as a result of an increase in the national minimum wage. Although Astaldi did not win on that point, we do see the power that corporations have in this system, so much so that they can bring international arbitration to challenge a change in labor conditions favorable to workers, even in a country that between 2002 and 2007 was considered to have a "mini minimum wage".<sup>114</sup>

Ultimately the arbitration tribunal ordered Honduras to pay US\$5.3 million to Astaldi, with interest adding another US\$730,000, in addition to its own and the investor's legal costs, which amounted to US\$637,951, totalling more than US\$6.6 million.

But the story between Astaldi and Honduras doesn't end there. After the end of the contract for the construction of the El Chaparral dam on the Lempa River, the Executive

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112 Astaldi S.p.A. & Columbus Latinoamericana de Construcciones S.A. v. Republic of Honduras, ICSID Case No. ARB/99/8. Contract. October 19, 2000. <https://www.italaw.com/cases/3579>

113 *Astaldi S.p.A. v. Honduras*, ICSID Case No. ARB/07/32, Award, September 2010.

114 Delgado R. (2018). El salario mínimo en Honduras ¿mini o maxi salario mínimo?, *Innovare*. [https://www.researchgate.net/publication/334620561\\_El\\_salario\\_minimo\\_en\\_Honduras\\_mini\\_o\\_maxi\\_salario\\_minimo/](https://www.researchgate.net/publication/334620561_El_salario_minimo_en_Honduras_mini_o_maxi_salario_minimo/)

Commission that coordinated the project decided to pay Astaldi the sum of US\$108 million for the total value of the contract, even though the company only completed 38% of the work. This was to prevent the company from resorting to arbitration. To this amount paid, an “additional payment of 28.7 million dollars was added as part of a ‘cost-benefit’ to avoid international arbitration”,<sup>115</sup> according to the words of Mauricio Funes, former president of the Commission.

This payment was made even against the opinions of the lawyers hired to advise the Commission, who suggested letting Astaldi file an arbitration claim, since the country should only pay for the executed works, not for the entire project. In addition, Astaldi was aware of problems on the right bank of the mountain and had mismanaged the dyke where the dam megaproject would be located. In other words, it was understood that even in international arbitration Honduras might not lose the lawsuit. However, ignoring the lawyers, Funes stated: “If we went to arbitration before a foreign court the cost for the country would be higher; we found the best solution for the project and avoided lawsuits against the State”.<sup>116</sup>

This case resulted in a criminal proceeding initiated in January 2019 when the Attorney General’s Office prosecuted the case. According to available information, Astaldi misrepresented the value of its goods and services at El Chaparral in order that the Commission disburse more money than was due. This led the Attorney General’s Office to accuse Funes and other officials of receiving a bribe from the company of US\$3.5 million dollars in Panama.<sup>117</sup>

#### **4.2.2. Elsamex: Hurricane Mitch and road failures**

In 2009, the Spanish construction company Elsamex S.A. filed a lawsuit against Honduras in relation to its repair work on the Tegucigalpa-Danlí CA-6 highway that was damaged by Hurricane Mitch in 1998. Elsamex relied on the terms of two contracts, one for the rehabilitation of the road under the 1998-2000 Honduran-Hispanic Financial Cooperation Program and the other for the rehabilitation of the road financed by Mitch funds.<sup>118</sup>

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<sup>115</sup> Second Round (September 24, 2015). CEL paid Astaldi even though its lawyers suggested arbitration. <https://segundavueltasv.wordpress.com/2015/09/24/cel-pago-a-astaldi-pese-a-que-sus-abogados-sugirieron-arbitraje/>

<sup>116</sup> Second Round. Idem.

<sup>117</sup> Lemus E. (February 24, 2020). The El Chaparral money trip that ended up in Ada Mitchell Guzman’s spa. Elfaro. [https://elfaro.net/es/202002/el\\_salvador/23816/El-viaje-del-dinero-de-El-Chaparral-que-termin%C3%B3-en-el-spa-de-Ada-Mitchell-Guzm%C3%A1n.htm](https://elfaro.net/es/202002/el_salvador/23816/El-viaje-del-dinero-de-El-Chaparral-que-termin%C3%B3-en-el-spa-de-Ada-Mitchell-Guzm%C3%A1n.htm)

<sup>118</sup> Superior Court of Accounts (Tribunal Superior de Cuentas) (June 30, 2010). Public Works Audit Report, Project “Rehabilitation of the Tegucigalpa-Danlí Highway, CA-6”. <https://www.tsc.gob.hn/wp-content/uploads/003-2010-DASP.pdf>

After signing the construction contract, the company conducted studies on the condition of the roads, which led to the conclusion that the original route was inadequate due to a thin asphalt layer and the existence of geological faults.<sup>119</sup> This was communicated to Honduras in March 2004. However, the order was given to start the project and, when it was finished, the quality of the road was not as agreed, for which reason Honduras alleged a breach of contract and sought to enforce the warranties.

The ICSID tribunal hearing the case was composed of a sole arbitrator, Enrique Gómez Pinzón (Colombia), who in 2012 ruled that Honduras was liable for breaching several clauses of the contract, and that the asphalt failures were not Elsamex's responsibility. According to the arbitrator, the company had only partially breached its contractual responsibility regarding the clearing of rights-of-way, culverts, ditches and drains during the works and, therefore, a deduction of US\$5,500 was appropriate for this purpose. Honduras, on the other hand, had to pay US\$8 million, excluding interest and procedural costs.

Interestingly, Honduras asked ICSID to set up a new tribunal to annul the first award arguing, among other things, that what Elsamex had done did not constitute an investment, since that would involve the construction of a new road and not the repair of an existing one. However, relying on other awards, the annulment tribunal determined that both new and rehabilitated roads can contribute to the economic development of a country and be considered an investment.<sup>120</sup>

#### **4.2.3. Gabourel Family Trust: Direct expropriation of land**

Another lawsuit brought against Honduras, which does not fall under our analysis of mafia-style investments and lawsuits during the narco-dictatorship, is the one filed by the Gabourel family trust in 2017, for direct expropriation of land for the construction of the airport on Utila Island.

Filed by the group's trustees under the Bilateral Investment Treaty with the United States, they claimed compensation of US\$251.8 million.<sup>121</sup> Little public information is available, but by the end of 2019 the State of Honduras had reached a settlement for an unknown amount with the Gabourels.<sup>122</sup>

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119 Andino Ochoa, S. and Briceño, J. (2023). Investment arbitration in Honduras. *La Revista de Derecho*. Vol. 44(1). <https://camjol.info/index.php/LRD/article/view/17147>

120 Ibidem

121 Williams, Z. (April 5, 2018). Tribunal of Escobar, Alexandrov and Silva Romero is in place to hear Unpublicized UNCITRAL BIT Claim Brought by US Investors Alleging Honduras Expropriation. <https://www.iareporter.com/articles/tribunal-of-escobar-alexandrov-and-silva-romero-is-in-place-to-hear-unpublicized-uncitral-bit-claim-brought-by-us-investors-alleging-expropriation/>

122 Bohmer, L. Ob. cit.

### 4.3. Mafia-style investments and post-coup demands

Since the coup d'état, Honduras has been the recipient of sixteen international arbitration claims. Much information about these claims remains unknown; to date, notices of arbitration, procedural decisions, and other communications between the parties have not been published. However, based on the available information and on the features of a claim initiated in 2018 for \$1 billion regarding the seizure of assets of Grupo Continental – belonging to the Honduran Rosenthal family – we characterize the investments and claims in this case as “mafia-like” following the framework outlined in section 1 (Section 1.2. “Conceptual framework”).



*Soldiers confront protests after the coup d'état; Source: Jen Moore*

### 4.3.1. Rosenthal lawsuit and disputes within the narco-state

<b>Applicant</b>	Inversiones Continental (Panama) S.A.
<b>Project</b>	Inversiones Continental (Panama) is a shareholder in Grupo Continental, a conglomerate operating in Honduras with subsidiaries in the banking, real estate, livestock, property management and cement sectors.
<b>Legal basis</b>	FTA between Central America and Panama (2009)
<b>Initiation of lawsuit</b>	April 12, 2023
<b>Reason for request</b>	The company's claim is for the seizure and forced liquidation by the Government of Honduras (during the JOH administration) of Banco Continental S.A., part of the Grupo Continental conglomerate, for alleged connections with money laundering and drug trafficking. The Government also placed other companies belonging to different industrial branches of the Group under administration. <sup>123</sup>
<b>Amount claimed</b>	US\$1 billion

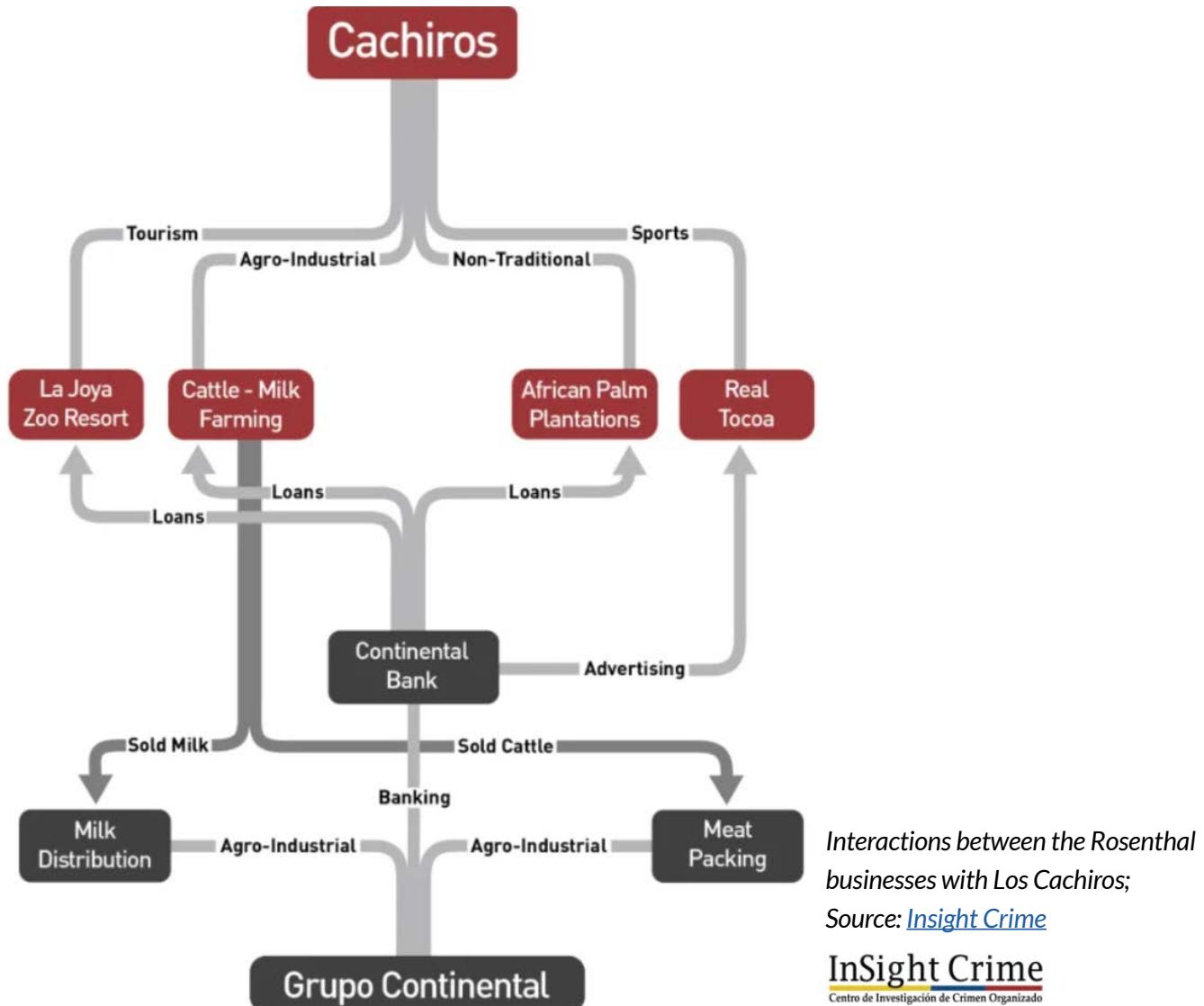
In 2018, Inversiones Continental (Panama) filed a US\$1 billion lawsuit against Honduras under the Central America-Panama Free Trade Agreement. This Panama-based holding company is a shareholder of Grupo Continental, a conglomerate in the banking and insurance, construction, media and telecommunications, and agriculture sectors. Grupo Continental is owned by the wealthy Rosenthal family. Until the time when many of its assets were seized, the group was headed by the late Jaime Rosenthal (senior) and his adult children, including Yani Rosenthal, a presidential candidate in the 2021 general elections and current president of the Liberal Party of Honduras.

On October 7, 2015, OFAC designated seven Honduran companies and three Honduran entrepreneurs – Jaime, Yani and Yankel (Jaime's nephew and former Minister of Investment between 2014-2015) – as Specially Designated Narcotics Traffickers under the Foreign Narcotics Kingpin Designation Act. This is a form of sanction that stops all financial transactions of companies and individuals in the United States, ultimately ending its ability to operate in the country.

The designation was due to the Rosenthals' involvement in providing money laundering services and support to multiple Central American drug trafficking organizations

<sup>123</sup> Inversiones Continental (Panama), S.A. v. Republic of Honduras (2018). ICSID Case No. ARB/18/40. <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/921/inversiones-continental-v-honduras>

and individuals, including the Los Cachiros drug cartel.<sup>124</sup> At the same time, Yankel Rosenthal was arrested at Miami airport and, along with Jaime and Yani, was charged by US prosecutors with money laundering.<sup>125</sup> Yani turned himself in to US authorities on October 28, 2015 and Yankel pleaded guilty to “attempting to conduct monetary transactions with assets derived from drug trafficking offenses in 2013.”<sup>126</sup>



124 U.S. Department of the Treasury. (October 7, 2015). Treasury Sanctions Rosenthal Money Laundering Organization. <https://home.treasury.gov/news/press-releases/jl0200>. At the time of designation two brothers of the Los Cachiros drug cartel, Javier and Devis Rivera Maradiaga, and associates of the Rosenthals, among other drug traffickers, were cooperating with the DEA.

125 U.S. Attorney's Office, Southern District of New York (October 7, 2015). *Manhattan U.S. attorney announces charges against four prominent Honduran businessmen for laundering the proceeds of narcotics and bribery offenses through accounts located in the United States*. <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-charges-against-four-prominent-honduran-businessmen>

126 U.S. Attorney's Office, Southern District of New York (August 29, 2017). Former Honduran cabinet official pleads guilty to Manhattan federal court to money laundering charge. <https://www.justice.gov/usao-sdny/pr/former-honduran-cabinet-official-pleads-guilty-manhattan-federal-court-money-laundering>

The strongest evidence against the Rosenthals was their business relationship with the Cachiros drug cartel, led by brothers Devis and Javier Rivera Maradiaga.<sup>127</sup> The Cachiros were central figures in Honduras' drug trafficking networks and moved large cocaine shipments in coordination with Fabio Lobo, son of former President Porfirio "Pepe" Lobo; Tony Hernandez, a congressional deputy and brother of former President Juan Orlando Hernandez; and JOH himself, among others.<sup>128</sup> As part of their money laundering operation, Los Cachiros and their associates also received contracts to launder drug money with the Honduran government, as advised and suggested by former presidents Lobo and Hernández in private meetings or through third parties.<sup>129</sup>

## Narco-State



**Devis Leonel Rivera Maradiaga,  
Ex-leader of the Los Cachiros cartel,  
confessed narcotrafficker**

["[President Pepe Lobo] advised me, he told me to set up companies because he was going to award us contracts from the government to pay us in exchange for the bribes that we had given him for his campaign... He [Fabio Lobo, son of President Lobo] was going to get the contracts through the government companies in exchange for a bribe that we would give him for the contracts, which was from 10 percent to 20 percent per contract... Since his dad had won the elections, [he] was looking for people to award contracts, roadway contracts, and several government contracts... to launder money."]

127 For a summary of the relationship between Los Cachiros and the Rosenthals and the political context in which it was built, see: Moreno I. (November 2015). The rise and fall of the Rosenthal clan. Submission. <https://www.revistaenvio.org/articulo/5115>

128 Santana M. and Zegarra G. (February 28, 2024). Ex-leader of Los Cachiros cartel refers to Juan Orlando Hernandez, ex-President of Honduras, as "my partner". CNN En Español. <https://cnnespanol.cnn.com/2024/02/28/exlider-cartel-cachiros-expresidente-honduras-juan-orlando-hernandez-socio-orix/>

129 El Heraldo (October 11, 2019). Cachiros claims to have recorded with a watch an encounter with Tony Hernández. <https://www.elheraldo.hn/honduras/juicio-tony-hernandez-cachiro-testigo-graba-reloj-restaurante-honduras-CUEH1325777>

Spring K. (November 5, 2020). The marriage of drug money and neoliberal development in Honduras. NACLA. 52(4), p. 397-403, <https://www.tandfonline.com/doi/abs/10.1080/10714839.2020.1840167>

Within weeks of the OFAC designation, Honduran authorities in the JOH government began seizing dozens of Rosenthal family businesses, properties and assets. According to lawyers representing the Rosenthals, the seizure of all of their properties, including some that were not on the OFAC list, and the subsequent sale (or disappearance) of their assets did not follow the correct legal procedure in Honduras.<sup>130</sup> More than sixty of the Rosenthals' properties and assets were confiscated and passed over to be managed by the state institution the Seized Property Administrator's Office (OABI).

Multiple scandals<sup>131</sup> are linked to the way the institution has administered seized assets and corruption. Its director, Jorge González, told the press in 2022 that there is no data or record of what happened to Grupo Continental's seized properties under the JOH administration.<sup>132</sup> However, it is known that \$108 million of Banco Continental's asset portfolio was auctioned to Banrural, a Guatemalan bank promoted extensively by JOH during his administration.<sup>133</sup> In addition, since the seizure of Grupo Continental's properties in Honduras, some of its more than 25,000 employees have sued the Rosenthals for labor rights violations after losing their jobs with the OFAC designation.<sup>134</sup>

Inversiones Continental's \$1 billion lawsuit against the State of Honduras is related to disputes over how its assets were confiscated. Now facing fines in the US after Yani and Yankel Rosenthal spent time in prison in the US on charges related to money laundering, the family hopes to recover what it lost. Two years after Yani Rosenthal's return to Honduras after serving his sentence in the United States, OFAC removed Grupo Continental from its list.<sup>135</sup> On top of the lawsuit in international court, Yani, along

130 CNUNEZ (February 21, 2019). Lawyer points out that Honduras could not only lose Rosenthal lawsuit, but by thousands. <https://www.radioamerica.hn/abogado-honduras-demanda-rosenthal-miles/>

131 El Herald (December 26, 2022). Honduran Congress will create rules to regulate OABI's substitute, says director. <https://www.elheraldo.hn/honduras/congreso-honduras-creara-normativa-para-regular-sustituta-oabi-dice-director-jorge-gonzalez-LE11519763>

132 La Tribuna (April 4, 2022). OABI: "Los Rosenthal tienen interpuesta demanda contra el Estado por la desaparición de sus bienes incautados." [Video file]. YouTube. <https://www.facebook.com/latribunahonduras/posts/el-director-de-la-oficina-administradora-de-bienes-incautados-oabi-jorge-gonz%C3%A1lez-712999516784768/>

La Prensa (September 1, 2014). Guatemala's Banrural will begin operating in Honduras in the coming months. <https://www.laprensa.hn/honduras/banrural-de-guatemala-comenzara-a-operar-en-honduras-en-los-proximos-meses-FGLP743745>

133 Escobar, I. (October 22, 2015). Banrural acquires assets of Honduran bank for US\$108 million. Prensa Libre. <https://www.prenslibre.com/economia/banrural-adquiere-activos-de-banco-hondureo-por-us108-millones/>

El Herald (February 26, 2014). Hernandez knows Banrural scheme. <https://www.elheraldo.hn/honduras/hernandez-conoce-esquema-de-banrural-LKeh702854>

134 Burgos, J. (September 24, 2022). Corte ordena a familia Rosenthal pagar prestaciones de 183 ex empleados de Diario Tiempo. Criterio. <https://criterio.hn/corte-ordena-a-familia-rosenthal-pagar-prestaciones-de-183-exempleados-de-diario-tiempo/>

135 U.S. Department of the Treasury, Office of Foreign Assets Control (August 25, 2020). Kingpin Act Designations, Designations Removals, and Designation Update. <https://ofac.treasury.gov/recent-actions/20200825>

with other members of his family, sued the State of Honduras in Honduran courts. In July 2024 a Court of Appeals ordered the restitution of real estate, vehicles, bank accounts and cash seized from the Rosenthal family.

The harshness and abusiveness with which the JOH administration confiscated the Rosenthals' assets is noteworthy. In similar cases in which Hondurans such as Alexander Ardón and Tony Hernández have been arrested by US authorities for drug trafficking, their assets were not (or were only partially) confiscated by the authorities. In the course of his drug trafficking trial in New York, US prosecutors argued that JOH was selective in dealing with his drug trafficking allies and enemies, acting against those who betrayed him and favoring those who were part of his cartel or financed his political campaigns with drug money. In Honduras, it is suspected that the JOH administration acted particularly harshly against the Rosenthals because they are one of the most powerful and wealthy families in the country who, among other things, did not support the 2009 coup and were not part of the ruling party.

#### **4.3.2. ZEDE Próspera: blatant cession of sovereignty**

##### **4.3.2.1. New ZEDE legislation**

The creation of Employment and Economic Development Zones in Honduras was made possible by constitutional and legislative reforms made in 2013, as we analyzed in part 2, section 2.2.3. However, under the new administration of President Xiomara Castro and in keeping with her electoral promise, in April 2022 the new members of the National Congress decided to unanimously approve Decree No. 32-2022 and Decree No. 33-2022. The first of these repealed the constitutional reforms of 2013, while the second repealed the Organic ZEDE Law along with all the laws, legal norms, provisions or legal precepts public or declared in reserve, confidential or secret, that were related to the Organic ZEDE Law.

Despite the presence of the political will to end the ZEDEs, some problems arose in the process. The most important drawback was that the first decree, No. 32-2022, was not ratified by Congress in 2023, as indicated by Honduran regulations must be done in the case of constitutional reforms. Without the ratifying legislative decree it is not clear whether the ZEDE figure continues to exist or not, both according to the Constitution and in the national debate. In other words, an opportunity was lost in political terms to fully do away with ZEDEs in Honduran law.

On the other hand, Legislative Decree No. 33-2022 did enter into force, since repeal of the ZEDE Organic Law does not require subsequent ratification in the way that constitutional reforms do. This means that the ZEDEs were left without a legal framework to regulate their implementation. Experts in this case say that, although the ZEDEs may exist in the Honduran constitution, they lack the secondary regulations to function or operate.<sup>136</sup> The repeal of the Organic ZEDE Law is precisely why ZEDE Próspera decided to sue Honduras at ICSID.

#### 4.3.2.2. Próspera's ZEDE claim at ICSID

<b>Applicant</b>	Honduras Próspera Inc. (USA), St. John 's Bay Development Company LLC (USA), Próspera Arbitration Center LLC (USA). These companies are known as Grupo Próspera. <sup>137</sup>
<b>Project</b>	ZEDE Próspera <sup>138</sup> : Real estate projects, insurance and other services
<b>Legal basis</b>	CAFTA-DR Investment Agreement (Legal Stability and Investor Protection Agreement, "LSA")
<b>Initiation of lawsuit</b>	February 3, 2023
<b>Reason for request</b>	Repeal of Legislative Decree No. 120-2013 (ZEDE Organic Law, approved in 2013). The decrees that reformed the Constitution to incorporate the ZEDE figure had also been repealed, but since this decision was not ratified in 2023, this reform did not enter into force.
<b>Amount claimed</b>	US\$10.775 billion dollars

<sup>136</sup> See: Mejía J. (November 8, 2013). A quick look at the current legal situation of ZEDEs. *Equipo de reflexión, investigación y comunicación-Compañía de Jesús*. <https://eric-sj.org/noticias/una-mirada-rapida-a-la-situacion-juridica-actual-de-las-zede/>

<sup>137</sup> For chronology and details of the ICSID claim, See: Honduras Próspera Inc, St. JoHn's Bay Development Company LLC, and Próspera Arbitration Center LLC v. Republic of Honduras. February 3, 2024. ICSID Case No. ARB/23/2. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/2>

<sup>138</sup> The ZEDE, initially established in the municipality of Roatán, Roatán Island, Department of Bay Islands, in accordance with its charter, is called "Próspera ZEDE", and was issued on September 12, 2019. In this report, we will use the name ZEDE Próspera, as it is a public domain name.

The company Honduras Próspera Inc. (USA), promoter and organizer of the ZEDE Próspera, located on the island of Roatán, in the Honduran Caribbean, presented<sup>139</sup> a claim against the country in ICSID for \$10.775 billion dollars. The company argues that the National Congress' elimination of the ZEDE Law implies non-compliance with CAFTA-DR and the Agreement for Legal Stability and Investor Protection. ICSID registered this claim on February 3, 2023, accepting jurisdiction<sup>140</sup> over the case.

The ICSID arbitration panel hearing this case was constituted in January 2024. One of the arbitrators, David Rivkin (USA), was appointed by Próspera and the other two, Juan Fernández-Armesto (Argentina-Spain) and Raúl E. Vinuesa (Argentina), by the ICSID General Secretariat.<sup>141</sup> They are arbitrators with extensive experience in the field of arbitration who have made public statements in favor of the continuity of arbitration for investor-State claims.

While the lawsuit is being settled in an arbitration panel in Washington DC, civil society in Honduras is debating the exorbitant amount that Próspera is demanding from the Government (almost a third of the GDP of Honduras for 2023). More fundamentally, there is heated debate on the legality of the ZEDEs, since the regulations that enabled its creation are tainted by the irregular procedure followed by the Congress under the presidency of JOH. One of the questions often asked is how it is that ICSID can accept jurisdiction for protecting investments set up in Honduras in an illegal and illegitimate manner, under the narco-dictatorship regime.<sup>142</sup>

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139 The plaintiffs in this case are Honduras Próspera Inc. (U.S.), and its partners St. JoHn's Bay Development Company LLC (U.S.), Próspera Arbitration Center LLC (U.S.).

140 Some provisions on ICSID proceedings indicate that registration does not mean acceptance of jurisdiction, as this is one of the first issues to be resolved by the Arbitration Tribunal once it is constituted.

141 During the first months of Prospera's lawsuit, the Government considered the registration of the lawsuit illegal and decided not to participate in the process that was opened. They refused to appoint an arbitrator in defense of the Honduran State. Pousset C. (August 9, 2023), *Honduras does not recognize ICSID's jurisdiction, how will it defend itself against six millionaire international lawsuits*. Contracorriente. <https://contracorriente.red/2023/08/09/honduras-no-reconoce-jurisdiccion-del-ciadi-como-se-defendera-frente-a-seis-demandas-internacionales-millonarias/>

142 See: Mejía, J. (2023). Apuntes para la reflexión sobre las reclamaciones internacionales derivadas de la derogación de las ZEDE. Submission. <https://drive.google.com/file/d/1bFBjw0DDeON5-IlwfBSXOgbYOq9ODJjQ/view>

#### 4.3.2.3. Próspera's Hidden Intentions

"For Próspera it's not so much about getting the money, because Honduras probably couldn't afford it anyway. It is more about Hondurans complying with their own commitments, laws and contracts they have signed. Also, a leftist government has to understand that you can't just say 'everything is illegal,' just because they don't like the government that preceded them."

- *Matthias Holland Lenz, legal director of Honduras Próspera Inc.*<sup>143</sup>

In 2022, alarm bells went off in the US government about the new policies of Xiomara Castro's government. In October 2022, two senators (one Republican and one Democrat) demanded that Secretary of State Anthony Blinken act against the Honduran government for attempting to end the ZEDEs.<sup>144</sup> A few months earlier, the State Department had issued its own condemnation of Castro's decision to eliminate the ZEDEs, and implied that the government might be in violation of two trade agreements, CAFTA-DR and the U.S.-Honduras BIT. The statement released by the State Department said, "The (Honduran) government has exposed itself to potentially significant liability and has fueled concerns about the government's commitment to the commercial rule of law."<sup>145</sup>

Indeed, Honduras' decision to terminate the ZEDEs and Próspera's subsequent lawsuit attracted international attention, not only because of the high amount claimed by the company, but also because the lawsuit itself has a hidden agenda: to pressure the Honduran government and Congress to back down on its sovereign decision to ban ZEDEs. In general, it appears that the companies that have sued Honduras in ICSID, including Próspera, are seeking to buy time and wait for an eventual change from the current government to one with which they could negotiate their permanence in the country.

143 See: Von Matthias Holland-Letz, (November 12, 2023). Sonne, Fürst und Steuerfreiheit - Monaco - Modell für Demokratiemüde? [Interview with Titus Gebel]. WDR. <https://www1.wdr.de/radio/wdr5/sendungen/dok5/feature-steuerfreiheit-monaco-100.html>

144 Perdomo, M. (October 14, 2022). Increasing pressure from the U.S. to impose repealed ZEDE. Criterio. <https://criterio.hn/aumenta-presion-desde-ee-uu-para-imponer-derogadas-zede/>

145 U.S. Department of State (2022). 2022 Investment Climate Statements: Honduras. <https://www.state.gov/reports/2022-investment-climate-statements/honduras/>

Some criticism of the arbitration claim arose in the United States, where a campaign was mounted by both Congress and civil society for the U.S. government to intervene in the matter. In 2023, thirty-three senators sent a letter asking President Joe Biden to take action against Próspera, and to terminate U.S. international treaties that include the ISDS dispute resolution mechanism.

“Próspera has repeatedly threatened to initiate ISDS arbitration under CAFTA-DR to bully the Honduran government into allowing them to continue operating under the abolished ZEDE framework. [The claim they presented in December 2022] will force the government of Honduras to potentially spend millions of dollars to defending itself for responding to the will of its people and asserting its sovereignty over these special government jurisdictions operating in its territory,”<sup>146</sup> reads the letter.

Another worrying aspect of Próspera’s claim has to do with the precedent that it may set, not only because it may encourage other companies invested in other ZEDEs to sue the State, but also because the country’s sovereignty is being called into question. Due to the very nature of the ZEDEs, which involves a flagrant cession of sovereignty, this is an international arbitration case that deals centrally with who controls territory.

“With this antecedent, companies will be able to sue States for cession of [territorial] sovereignty, beyond the contracts [involved]. This is alarming.”

Lucila Vijil, CESPAD, May 9, 2024.

Another company also considering suing Honduras is ZEDE Ciudad Morazán, in the municipality of Choloma. In March 2024, Massimo Mazzone, Italian owner of this controversial ZEDE, threatened the government saying: “Let us work, or shut us down and face international consequences.”<sup>147</sup>

<sup>146</sup> Congress of the United States (May 2, 2023). Letter from 33 Senators to President Joe Biden. <https://www.warren.senate.gov/imo/media/doc/2023.05.02%20Letter%20to%20Tai,%20Blinken%20re%20elimination%20of%20ISDS.pdf>

<sup>147</sup> El Libertador (March 11, 2024). Italian threatens President Castro if she orders closure of ZEDE Próspera. <https://ellibertador.hn/2024/03/11/italiano-amenaza-a-presidenta-castro-si-ordena-cierre-de-zede-prospera/>

#### 4.3.2.4. Resistance and opposition to ZEDEs

The creation of ZEDEs has always been questioned by broad sectors of Honduran civil society, from the first mention of the idea of REDs and then in relation to the ZEDEs themselves. The communities where attempts have been made to install them have also expressed their opposition. Such is the case with ZEDE Próspera, which is located on lands that form part of the village of Crawfish Rock, Roatán Island. There, the inhabitants consider ZEDE Próspera both a dispossession of land and a source of environmental degradation.

The Honduran press reports that ZEDE Próspera has expanded to occupy 3.1% of the island,<sup>148</sup> which measures 83 square kilometers. In its expansion process, the company Honduras Próspera Inc. has restricted access to public beaches and has built walls that prevent the free movement of the communities of Crawfish Rock,<sup>149</sup> whose main economic activities are fishing and carpentry, alongside other professions. Prospera's intention was to convert the entire island of Roatán into a ZEDE, says a community leader from Crawfish Rock.

"I believe that former President Juan Orlando's idea was to convert Roatán into a ZEDE. At first the community didn't know about the ZEDE. Then, one of the first things they did was to try to enclose the community. They put security guards on the road, supposedly because there were many assaults in the street, and they started collecting signatures supposedly for the security of the community. When we realized this, we stood up and rejected this enclosure. Other consequences of ZEDEs are mental health and environmental damage; it is not pleasant to live in a place where you don't really know what might happen. We may be at risk of losing our homes at any moment, if they actually continue as a ZEDE. Deforestation is also quite worrying because it will bring many negative consequences."

- Venessa Cárdenas, teacher and resident of Crawfish Rock, in interview May 2024.

148 Perdomo, M. (August 9, 2023). ZEDE Próspera, el proyecto anarcocapitalista que se ha adueñado sigilosamente del 3% de isla en el caribe hondureño. Criterio. <https://criterio.hn/zede-prospera-el-proyecto-anarcocapitalista-que-se-ha-aduenado-sigilosamente-del-3-de-isla-en-el-caribe-hondureno/>

149 Ibid.

The company not only tried to limit the free movement of Crawfish Rock residents living next to ZEDE Próspera, but at times increased the presence of security personnel due to a suspicious wave of assaults that had never been seen before in the area, and which the company used, oddly, as an excuse. For Cárdenas, the company has a clear objective: to co-opt and divide the community while it continues to grab land and continue building.

Something that differentiates the opposition to ZEDEs from other arbitration claims against Honduras, is the widespread national rejection of the idea of creating a private and autonomous enclave that threatens national sovereignty. Various sectors of Honduran society and international bodies have spoken out against the ZEDEs, including the Honduran Bar Association, the National Autonomous University of Honduras, the Honduran Council of Private Enterprise, OFRANEH, COPINH, and the Center for the Study of Democracy (CESPAD), among many others. Similarly, more than seventeen organizations formed a coalition called the National Movement against ZEDEs to coordinate actions at the national level. In general, resistance to ZEDEs has manifested itself in dozens of demonstrations throughout the country, as well as in sit-ins and public statements from 2011 to the present. The mobilizations that have taken place each year on May 1, June 28 and September 15 stand out. Of momentous importance was the presentation of the Citizens' Law Initiative for the Repeal of the ZEDE Regulations, backed by more than 22,000 signatures, which took place on July 30, 2021, with the participation of multiple social organizations and prior to repeal of the ZEDE Organic Law.



The movement against the ZEDEs has held several gatherings. The first of these was in the city of Siguatepeque, Department of Comayagua, in June 2021. In November 2023, the 'Meeting of the Resistance against ZEDEs in Honduras' was held, in which social organizations denounced the fact that ZEDEs have continued expropriating territory, something that is usually only a function of states. The territorial dispossession carried out by the ZEDEs, based on the Organic Law, ignores indigenous peoples and social organizations in resistance to ZEDEs who state that no lawsuit or arbitration claim will succeed in taking away their territories, and that their sovereignty is not up for discussion. These organizations have likewise denounced threats and attacks by the ZEDE on those defending their territories, demanding that the government legally ratify the annulment of the constitutional reforms that permitted ZEDEs in the first place.<sup>150</sup>

"Honduran social movements have an agenda. We are concerned about ZEDEs, but there are other issues as well, such as water and mining. We have to unite in a common agenda. We need to continue meeting as movements and deepen consciousness-raising. Honduras must get out of the treaties [that permit ISDS]."

– *Common Front against ZEDEs, La Ceiba, in interview, May 23, 2024*<sup>151</sup>

Not only have ZEDEs, particularly ZEDE Próspera, been widely rejected by Hondurans, but up to eight legal complaints have been filed against the legality and operation of ZEDEs. In 2021, the National Anti-Corruption Council (CNA) filed a complaint against congressional deputies for treason for the approval of the laws related to ZEDEs.<sup>152</sup> The current government of President Castro, through the Secretary of Finance, has called the ZEDEs "an act of public-private corruption".<sup>153</sup> At the same time, Honduran media have reported that ZEDEs were created as a way to avoid the extradition of Hondurans accused of drug trafficking to the U.S. in the context of the narco-state.<sup>154</sup> It has also been

150 See: Arcah [@Arcah\_hn] (November 2023). Popular Declaration in the framework of the Meeting of Resistance against ZEDE in Colombia. Twitter. [https://twitter.com/Arcah\\_hn/status/1720114690993356957/photo/1](https://twitter.com/Arcah_hn/status/1720114690993356957/photo/1)

151 Interview with the Movement against ZEDE in Tegucigalpa, May 23, 2024.

152 Maldonado, F. (June 29, 2021). *The ANC denounces to the Attorney General's Office the deputies who approved the ZEDE*. <https://www.elheraldo.hn/honduras/cna-denuncia-fiscalia-diputados-aprobaron-ley-zede-congreso-nacional-DWEH1474326>

153 ZEDE are a complete act of public-private corruption (June 2, 2023). *Criterion*. <https://criterio.hn/zede-son-un-completo-acto-de-corrupcion-publico-privado/>

154 Díaz, M. [Notifides] (June 25, 2021). *Extradition in the ZEDE*. Facebook. <https://www.facebook.com/watch/?v=203994418271247>

Time (June 24, 2021). *In Honduras: In ZEDEs extradition would not be applicable, according to analyst*.

reported that at least one official close to former President Juan Orlando Hernández – Ebal Díaz, who was part of the CAMP<sup>155</sup> of ZEDE Próspera – is still receiving a salary for his position on the committee.<sup>156</sup> A few weeks after Hernández's extradition to the US for drug trafficking, Díaz left Honduras for Nicaragua where he has been living ever since. Díaz is currently facing serious corruption charges from the Honduran Public Prosecutor's Office.<sup>157</sup>

Regarding the legal procedure for the creation and implementation of ZEDEs, experts point out some procedures that were not followed. A first element is that any ZEDE must be created in Congress by a qualified majority, that is, by at least eighty-six congresspeople. A second element is that two thirds of the citizens from the area where a ZEDE is to be created must approve its creation through a public plebiscite, unless they are towns with low population density as determined and ratified by the National Institute of Statistics (INE). A third element is that both the opinion issued by the INE (in which it calculates and declares that an area is of low population density), and the decree of creation of a ZEDE by the National Congress, must be published in the official government newspaper *La Gaceta* in order to take effect. In the case of ZEDE Próspera, these requirements were not met.

According to Joaquín Mejía, an expert on the subject from the organization Team for Reflection, Research and Communication-Companion of Jesus (ERIC-SJ by its initials in Spanish):

"The legality of the investment is a key issue to be addressed in ICSID proceedings, as it affects both investments that were obtained fraudulently or corruptly, as well as investments that, in their establishment or acquisition, failed to comply with important requirements imposed by local law."<sup>158</sup>

155 According to Geggia, B. and Nuila, A. (February 15, 2021). A Private Government in Honduras Moves Forward. [NACLA](https://nacla.org/news/2021/02/12/private-government-honduras-zede-prospera). <https://nacla.org/news/2021/02/12/private-government-honduras-zede-prospera>.

156 Perdomo, M. (October 19, 2022). From Nicaragua, Ebal Díaz continues regulating ZEDE and profiting from Honduran territory. Criterio. <https://criterio.hn/desde-nicaragua-ebal-diaz-sigue-regulando-las-zede-y-lucrando-del-territorio-hondureno/>

157 Public Prosecutor's Office (July 30, 2024). Fiscal requirement for trust (line 1) for the execution of the Morazán residential project with which the State was defrauded for more than 294 million lempiras. <https://www.mp.hn/publicaciones/requerimiento-fiscal-por-fideicomiso-linea-1-para-la-ejecucion-del-proyecto-residencial-morazan-con-el-cual-se-defraudo-al-estado-por-mas-de-294-millones-de-lempiras/>

158 See: Mejías, J. (2023). *Ob. cit.*

In other words, if it is considered that ZEDE Próspera's investments were made outside the law and without full compliance with the regulations, the ICSID claim should not proceed. However, despite protests, legal complaints, the questioning of the ZEDE creation procedure, and even the ICSID suit and the repeal of the ZEDE Organic Law in 2023, the company Honduras Próspera has not stopped the expansion of ZEDE Próspera. On the contrary, it has acquired more land while continuing construction and logging in the areas it occupies. Meanwhile, the Crawfish Rock community is seeing first hand the dispossession of their territories and the degradation of fragile local ecosystems on the island of Roatán.

#### **4.3.2.5. Debate on the current status of ZEDEs**

Since ZEDEs were introduced in Honduras, a debate has raged about their legality and legitimacy, and more recently about their actual existence or, more seriously still, about the continued operations of three of them (largely after Congress repealed the law regulating them). As such, there is doubt as to whether the investments of Grupo Próspera and others can really be considered a ZEDE as such, since they do not meet the requirements to be one.

Debate aside, what is certain is that the ZEDEs – that of Próspera as well as Ciudad Morazán and Orquídea – continue to operate under the name and pretension of being ZEDEs and, even worse, they are expanding. For example, on mainland Honduras, ZEDE Próspera obtained a piece of land known as Puerto Satuyé located close to the city of La Ceiba on the Caribbean coast. Over time, their presence is becoming established in the local imagination.

“In Satuyé people talk about the ZEDE as if it were natural, it is being normalized. This is something that is going to affect us. Próspera is small in comparison to what they are doing in Satuyé. Próspera was a kind of distraction. They are building day and night here, advancing with construction. This has to be understood on a different level. These are libertarians and what they’re interested in is promoting this ideology in Honduras, that is how they hope to consolidate the ZEDEs.”

*- Common Front against ZEDEs in La Ceiba, in interview, May 16, 2024*

For Crawfish Rock residents living next to ZEDE Próspera, the issue is simple.

“The company wants to stay; the lawsuit is a way to pressure, to weaken the struggle and to establish [their project] one way or another, that “either we stay or we leave rich”. They stay and take power, or, if they leave, they leave as millionaires. I personally feel that the government is not doing enough, neither the national government nor the municipality. The government should shut it down, but it doesn’t. The company continues to expand and build.”

– *Venessa Cárdenas, resident of Crawfish Rock, in an interview on May 19, 2024*

Given the ambiguity about the legality of ZEDEs and their continued expansion, civil society has highlighted at least three proposals to address the issue of ZEDEs in general and the case of the Próspera lawsuit at ICSID in particular (according to impressions gathered from interviews conducted with various actors in May 2024). The first is to close all ZEDEs for lack of a legal framework that regulates and allows their operation. Secondly, in relation to the ICSID claim, the arbitration panel should review whether the legal procedures to establish a ZEDE were followed and published in the official government publication *La Gaceta*.<sup>159</sup> If not, the ZEDEs lack legal support to exist and operate, something that ICSID should consider when settling this case. Finally, it was emphasized that the Government should be transparent about the arguments being presented to ICSID in the arbitration claim – both of Próspera and of the Attorney General’s Office – since none of the documents in this case have been published so far.

A final aspect related to the previous proposals is the importance of definitively repealing the constitutional reforms that first enabled ZEDEs in 2013. Until this happens, ZEDEs will likely continue to exist in the constitution and will continue to expand and consolidate their operations locally. In the meantime, the billion-dollar ZEDE Próspera lawsuit at ICSID, plus the threat of new lawsuits such as that of ZEDE Ciudad Morazán, pressure the government to backtrack on its decisions. This is the ultimate goal of the

<sup>159</sup> As stated in the ZEDE Organic Law: “Approval by Congress by qualified majority for the creation of a ZEDE; public plebiscite: publication of the results of the plebiscite and decree of creation in the official gazette *La Gaceta* to have legal validity. CESPAD. (March 10, 2023). What has happened with the ZEDE in Honduras and what is their status? <https://cespad.org.hn/que-ha-pasado-con-las-zede-en-honduras-y-cual-es-su-estatus/#:~:text=Refiere%20que%20el%20art%C3%ADculo%20329,%E2%80%9D%2C%20es%20decir%2086%20votos>.

lawsuit: to dissuade the government from getting rid of ZEDEs altogether. This is the only possible explanation for ZEDE Próspera suing Honduras for the exorbitant sum of almost US\$11 billion.



Protest against ZEDEs; Source: [ContraCorriente](#)

#### 4.3.3. Claims over the renegotiation of electricity contracts

In October 2022, the National Congress approved the Electricity Law, promoted by the Government of Xiomara Castro. This law aims to rescue the National Electric Energy Company and renegotiate the terms of contracts for electricity generation with private companies, seeking to improve the rates at which the state purchases electricity from them. The high energy prices that ENEE has been paying to these private energy producers contributed to putting it in dire straits.<sup>160</sup>

Among these private companies are Scatec ASA, Norfund, KLP Norfund Investments, Inversiones y Desarrollos Energéticos SA, and Fernando Paiz Andrade & Anabella Schloesser de Paiz, which have sued the State of Honduras after the approval of the aforementioned law. X-Elio Energy SL and Víctor Miguel Silhy Zacarías have filed claims

160 Burgos, J. (August 27, 2022). Reforma energética logra que productores de energía con contratos lesivos cedan a renegociación. Criterio. <https://criterio.hn/reforma-energetica-logra-que-productores-de-energia-con-contratos-lesivos-cedan-a-renegociacion/>

in response to approval of the law more recently, in the run-up to Honduras' exit from ICSID, in August 2024. Being very recent claims at the time of writing, we have little information about them.

In addition, government action over issues of non-compliance in the contract with the Honduras Electric Company (Empresa Eléctrica de Honduras) has led to an additional claim from the energy sector, from Eléctricas de Medellín Ingeniería y Servicios S.A.S.

#### 4.3.3.1. Claim by Scatec ASA, Norfund and KLP Norfund Investments AS

<b>Applicant</b>	Two separate lawsuits related to the same solar power generation projects <ul style="list-style-type: none"> <li>• Scatec ASA (Norway)</li> <li>• Norfund (Norwegian Investment Fund for Developing Countries, owned by the Norwegian Ministry of Foreign Affairs)</li> <li>• KLP Norfund Investments AS (Norway)</li> </ul>
<b>Project</b>	<ul style="list-style-type: none"> <li>• Agua Fria Solar Energy Park in Valle</li> <li>• Los Prados Solar Energy Park in Choluteca</li> </ul>
<b>Legal basis</b>	Law for the Promotion and Protection of Investments (2011)
<b>Initiation of lawsuit</b>	April 21, 2023 (both) <sup>161</sup>
<b>Reason for request</b>	According to some media reports, these companies submitted notifications of their intention to go to arbitration due to alleged discriminatory treatment, non-payment of invoices and fear of expropriation after the approval of the Electricity Law of 2022. <sup>162</sup>
<b>Amount claimed</b>	US\$200 million dollars each <sup>163</sup>

The session known as the 'legislative diarrhea' in Congress on January 20, 2014, saw the approval of 23 contracts. Five of them –Fotovoltaica Los Prados S.A., Fotovoltaica Sueña (FOTOSUR), Generaciones Energéticas S.A. (GENERSA), Foto Sol and Energías Solares S.A. (Enersol) – were awarded to Liana María Bueso Majano and Jim Eloy Muñoz Gómez.

<sup>161</sup> See: Scatec ASA v. Republic of Honduras. ICSID Case No. ARB/23/12 and Norfund and KLP Norfund Investments AS v. Republic of Honduras. ICSID Case No. ARB/23/13.

<sup>162</sup> See: ICSID Global (April 24, 2023): *Two Norwegian Renewable Companies Sue Honduras in ICSID*. <https://ciarglobal.com/dos-companias-noruegas-de-renovables-demandan-a-honduras-en-ciadi/>

<sup>163</sup> Information received from sources in the Attorney General's Office.

Bueso Majano had links to several corrupt entities during the narco-dictatorship.<sup>164</sup> She was a congressional candidate for the National Party in the 2012 elections. She was employed from 2010 to 2012 in the government institute for infrastructure and transportation formerly known as SOPTRAVI, which was later dismantled for its involvement in awarding government contracts to the Los Cachiros drug cartel to launder drug money. She was also legal representative of Palmerola Airport and legal coordinator of COALIANZA from approximately 2015 until 2017, which was later also dismantled.<sup>165</sup> In addition, she was legal representative of Joya Grande Park – owned by Los Cachiros and later confiscated when the cartel was designated as a drug trafficking organization by OFAC.

Bueso Majano and Muñoz Gómez sold the five contracts to Norfund for US\$11.7 million, earning US\$1.9 million per contract.<sup>166</sup>

Another contract approved during the legislative diarrhea was the Agua Fría project. It was originally awarded to the company PRODERSSA, with the participation of shareholders Roberto A. Mejía and Roberto David Castillo Mejía. PRODERSSA and its shareholders have been implicated in fraudulent practices, corruption networks and drug trafficking. Roberto A. Mejía was an assistant to the National Party in the National Congress in 2014 and a lawyer for Los Cachiros, allegedly helping to launder drug money.<sup>167</sup> He subsequently sold his shares in PRODERSSA to Lisandro Flores Alfaro, an individual also involved in receiving contracts during the aforementioned congressional session.<sup>168</sup>

David Castillo Mejía was an employee of ENEE. He was accused in the corruption case “Fraud in Gualcarque” for using his position in the state electricity institution to obtain contracts and licenses in favor of a hydroelectric project opposed by indigenous leader Berta Cáceres and the organization she co-founded, COPINH.<sup>169</sup> Castillo Mejía

164 Association for a More Just Society (November 21, 2018). Research 1: *Quemados, el negocio de la energía eléctrica*. [https://revistazo.com/docs/Investigacion\\_Quemados.pdf](https://revistazo.com/docs/Investigacion_Quemados.pdf)

165 Silva, F. (January 25, 2024). *Victimas de conflicto minero esperan requerimiento fiscal contra Lenir Pérez previo a una posible ampliación de la concesión*. <https://contracorriente.red/2024/01/25/victimas-de-conflicto-minero-esperan-requerimiento-fiscal-contra-lenir-perez-previo-a-una-possible-ampliacion-de-la-concesion/>.

166 Association for a More Just Society (November 21, 2018). Research 1: *Quemados, el negocio de la energía eléctrica*. [https://revistazo.com/docs/Investigacion\\_Quemados.pdf](https://revistazo.com/docs/Investigacion_Quemados.pdf)

167 Ibid.

168 Ibid.

169 COPINH. (March 23, 2023). *Commuqué: Those guilty of the corruption that assassinated Berta Cáceres must be condemned*. <https://copinh.org/2023/03/comunicado-los-culpables-de-la-corrupcion-que-asesino-a-berta-caceres-deben-ser-condenados/>

is currently in prison awaiting two sentences, one for his role in the murder of Berta Cáceres and another for fraud in said corruption case.<sup>170</sup>



*“Norwegian companies with links to David Castillo, SCATEC and NORFUND, sue the state of Honduras”; Source: copinh.org*

In 2018, PRODERSSA was seized by the Honduran Attorney General’s Office for its ties to Los Cachiros.<sup>171</sup> A company that remains linked to Castillo’s family, PEMSA, is still a shareholder in the Agua Fria project.<sup>172</sup> According to COPINH, PEMSA’s accounts in Panama were used to receive a \$1 million payment just two days before Cáceres’ murder to pay the hitmen who broke into her home on March 2, 2016.<sup>173</sup>

In 2019, following David Castillo’s arrest, PRODERSSA’s board of directors authorized the transfer of Castillo’s and other companies’ shares to Norfund.

170 Perdomo, M. (May 3, 2024). Guilty three accused in Fraud case on the Gualcarque, including co-perpetrator of the murder of Berta Cáceres. Criterio. <https://criterio.hn/culpables-tres-imputados-en-caso-fraude-sobre-el-gualcarque-incluido-coautor-del-asesinato-de-berta-caceres/>

171 Public Prosecutor’s Office (March 5, 2018). MP executes arrests and 58 asset seizures of people linked to the Rivera Maradiaga brothers in Operation Apolo. <https://www.mp.hn/publicaciones/mp-ejecuta-capturas-y-58-aseguramientos-de-bienes-a-personas-vinculadas-a-los-hermanos-rivera-maradiaga-en-operacion-apolo/>

172 Scatec (n.d.). Scatec: Honduras. <https://scatec.com/locations/honduras/#agua-fria-honduras>

173 COPINH. (April 8, 2021). Newsletter nº 15: Trial against David Castillo begins, new evidence links Daniel Atala. <https://copinh.org/2021/04/newsletter-n-15-trial-against-david-castillo-begins-new-evidence-links-daniel-atala/>

"With this action the Norwegian companies, one of them state-owned, demonstrate their criminality. Not only did they partner with corrupt businessmen, but now they expect the Honduran people to pay for their "losses" by reaffirming the lie that they are "development" banks."

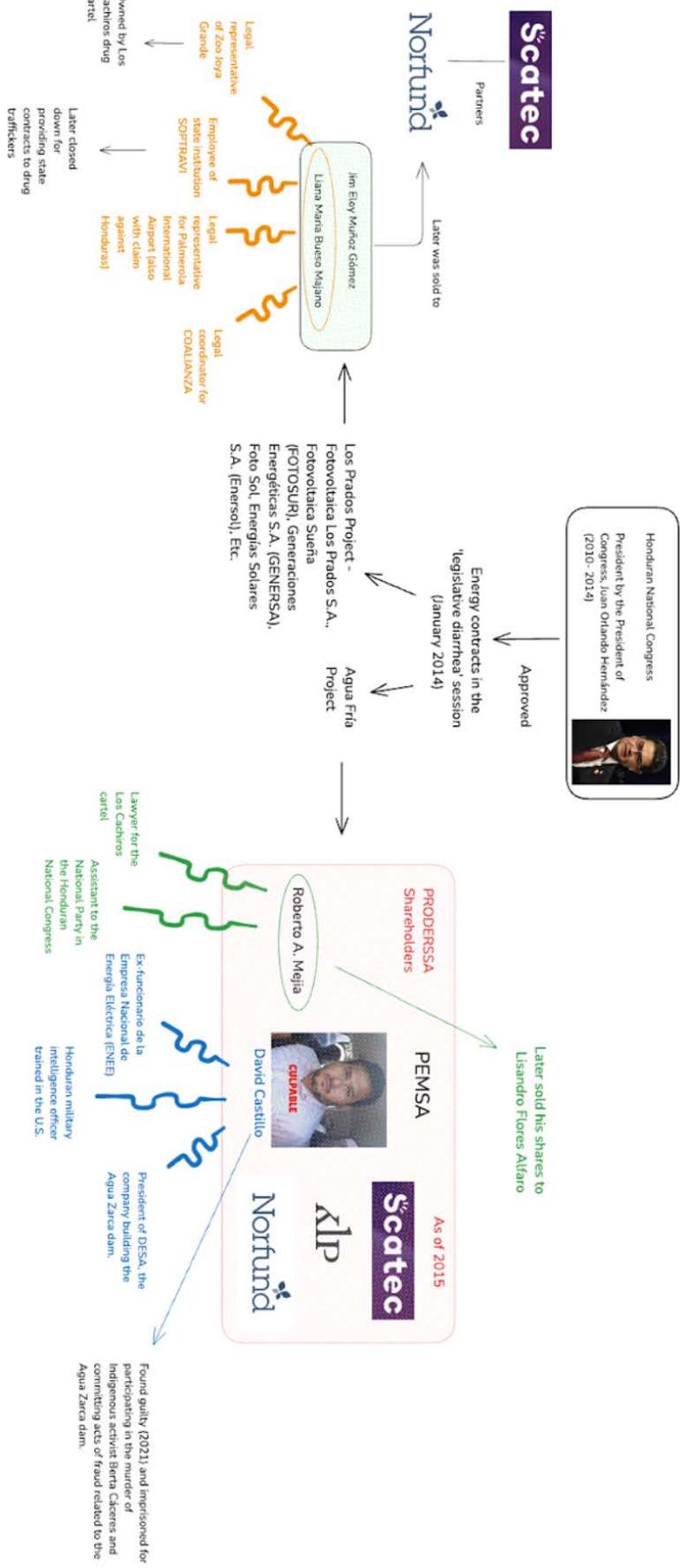
- *Berta Cáceres Flores, general coordinator of COPINH, 2016 (shortly before her assassination)*<sup>174</sup>

In May 2015, Scatec Solar and PRODERSSA signed a contract for the operation of the Agua Fría solar project, and in October, Scatec Solar and Norfund signed a contract to purchase rights to build the Los Prados solar project in the municipality of Namasigüe in Choluteca.

Los Prados was rejected by the local population, including residents of the communities of Los Prados I and II, Costa Azul, Guamero, La Cuchilla and Ranchería, due to risks of displacement. The Network of Women Human Rights Defense Lawyers (RADDH by its initials in Spanish) said, in an interview conducted by the research team on May 23, 2024, that together with affected communities they have submitted 33 complaints against public officials for irregularities in the approval of contracts (these were filed before the Special Prosecutor's Unit against Corruption Networks (UFERCO by its initials in Spanish), a dependency of the Public Ministry). They also filed a case against the decree approved during the legislative diarrhea session arguing that it should be declared unconstitutional. Local communities, with the support of several civil society organizations,<sup>175</sup> have already paid a high cost for their opposition to the project. Community leaders have faced persecution and criminalization for years, leading to negative impacts on their economic wellbeing and health. To date, nine people remain criminalized while others have had to accept conditions such as to not participate in protests in order to resolve their legal situation. Despite the lack of local support for the project, Scatec Solar and Norfund continued with construction.

174 COPINH. (April 26, 2023). Norwegian companies linked to David Castillo, SCATEC and NORFUND, sue the State of Honduras. <https://copinh.org/2023/04/empresas-noruegas-vinculadas-a-david-castillo-scatec-y-norfund-demandan-al-estado-de-honduras/>

175 The organizations are Caritas, ACI Participa, FOSDEH, Centro de Desarrollo Humano (CDH), MASSVIDA movement, Red de Abogadas Defensoras de Derechos Humanos (RADDH).



"The criminalization started in 2015, in the community of Los Prados. People were horrified by the clearing of old trees from their territories, but also because a lot of machinery arrived to clear the land. The people were not informed, nobody gave information as to what the project was about."

- *Red de Abogadas Defensoras de Derechos Humanos (RADDH), in interview, May 23, 2024*

In addition to the judicial harassment, criminalization and social division caused by solar projects and companies, local communities complain of environmental damage and restricted access to their land and crops due to hostility in the area.



Namasigüe votes no to solar energy projects; Source: Criterio Hn



Namasigüe votes no to solar energy projects;  
Source: Criterio Hn

“The water contamination from the project affected us because our water sources dried up and we don’t have the water we had before. My mother had a well there before and she would go [to fetch water] with a water drum, we didn’t have to pay for water. We didn’t have to go around buying bags of water to drink, but now we have to pay for water because the creek is dry. [The solar energy companies] buried the water sources that were there. That has been the hardest thing for us because there is not enough water to bathe with all the heat here.”

*A woman affected by the Scatec and Norfund solar projects, at a community meeting, May 23, 2024*

The two claims brought by the Norwegian companies respond to the implementation of the 2022 Electricity Law promoted by the current administration. According to media reports,<sup>176</sup> Scatec, Norfund and KLP have been using the two suits, for a total of US\$400 million,<sup>177</sup> to pressure the State during the renegotiation of their contracts. Allegedly, the companies would be willing to withdraw their multi-million dollar claims if the Honduran government satisfies certain unspecified conditions. Affected communities opposed to the Los Prados project see the arbitration suits as a form of blackmail and fear that approval for the expansion of the solar project is on the table as part of the negotiations.

#### **4.3.3.2. Claim by Inversiones y Desarrollos Energéticos, S.A.**

<b>Applicant</b>	Inversiones y Desarrollos Energéticos S.A (Panama)
<b>Project</b>	No information
<b>Legal basis</b>	Central America-Panama Free Trade Agreement
<b>Initiation of lawsuit</b>	August 30, 2023 <sup>178</sup>
<b>Reason for request</b>	The renegotiation of power generation contracts under the 2022 Electricity Law.
<b>Amount claimed</b>	US\$200 million <sup>179</sup>

176 Habla Como Habla (HCH), interview with Representative Chele Castro (May 21, 2024). <https://x.com/HCHTelevDigital/status/1793106261837246633>

177 Information received from sources in the Attorney General’s Office.

178 See: Inversiones y Desarrollos Energéticos, S.A. v. Republic of Honduras. ICSID Case No. ARB/23/40. ICSID Convention-Arbitration Rules. August 30, 2023. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/40>

179 Information received by sources of the Attorney General’s Office of the Republic.

There is little information publicly available about Inversiones y Desarrollos Energéticos, S.A., a company registered in Panama,<sup>180</sup> and its project. Luis Larach, part of the Honduran elite, is known to have invested in several power generation projects in the country and is listed as the company's general manager.<sup>181,182</sup>

#### 4.3.3.3. Claim by Fernando Paíz Andrade & Anabella Schloesser de León de Paiz

<b>Applicant</b>	<ul style="list-style-type: none"> <li>• Fernando Paíz Andrade (Guatemala)</li> <li>• Anabella Schloesser de León de Paiz (Guatemala)</li> </ul>
<b>Project</b>	Pacific Solar Energy, Valle, Honduras
<b>Legal basis</b>	CAFTA-DR
<b>Initiation of lawsuit</b>	September 13, 2023 <sup>183</sup>
<b>Reason for request</b>	The renegotiation of power generation contracts under the 2022 Electricity Law.
<b>Amount claimed</b>	US\$160 million <sup>184</sup>

Like the three previous claims, this one responds to the Castro administration's efforts to renegotiate high prices for solar power generation, originally laid out under the narco-dictatorship, and the bailout of ENEE.

Pacific Solar Energy is another company that obtained a solar power generation contract granted during the legislative diarrhea session. It was originally awarded to Lisandro Flores Alfaro, son-in-law of former President Rafael Leonardo Callejas, and Karla Maria

180 Opencorporates (n.d.). *Inversiones y desarrollos energéticos S.A. (IDESA). INVERSIONES Y DESARROLLOS ENERGÉTICOS S.A. (IDESA)*. <https://opencorporates.com/companies/pa/836432>

181 Dun & Bradstreet (n.d.). *Inversiones y Desarrollos Energéticos S.A.* [https://www.dnb.com/business-directory/company-profiles.inversiones\\_y\\_desarrollos\\_energeticos\\_sa.d74af5595ff9fea545562d7a79d07a0f.html](https://www.dnb.com/business-directory/company-profiles.inversiones_y_desarrollos_energeticos_sa.d74af5595ff9fea545562d7a79d07a0f.html)

182 Euraque, D.E. (2019). The historical configuration of Honduran elites in the face of the 2009 coup d'état. *Anuario de Estudios Centroamericanos*, 45. [https://www.scielo.sa.cr/scielo.php?pid=S2215-41752019000100019&script=sci\\_abstract&tlng=es](https://www.scielo.sa.cr/scielo.php?pid=S2215-41752019000100019&script=sci_abstract&tlng=es)

Investigative Reporters (2022). *An energy reform to tackle corruption and rescue the economy*. <https://reporterosdeinvestigacion.com/2022/07/25/una-reforma-energetica-que-enfrenta-la-corrupcion-y-rescatara-la-economia/>

183 See: Fernando Paiz Andrade and Anabella Schloesser de León de Paiz v. Republic of Honduras. ICSID Case No. ARB/23/43. ICSID Convention-Arbitration Rules. September 13, 2023. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/43>

184 Information received from sources at the Attorney General's Office.

Ramos Andino, another founder of Pacific Solar Energy. Later, they sold it to US company, UPower, for US\$10 million.<sup>185</sup>

Two Guatemalan shareholders in Pacific Solar Energy, Fernando Paiz Andrade and his wife Anabella Schloesser de Leon de Paiz, filed the lawsuit.<sup>186</sup> According to public documents,<sup>187</sup> Fernando Paiz Andrade owns 1% of Pacific Solar Energy and Solar Energy Holding Ltd. owns the remaining 99%. However, it is difficult to trace the owners of the latter because Solar Energy Holding is registered in the Bahamas.<sup>188</sup> In 2018, 70% of the shares of Solar Energy Holding Ltd. were purchased by InterEnergy Holdings, whose majority shareholder is Latam Energy Corp. InterEnergy Holdings is a large energy producer in Latin America registered in the Cayman Islands that receives financial support from the World Bank's International Finance Corporation and other international financial institutions. Its CEO and founder, Rolando González-Bunster, is close friends with Bill and Hillary Clinton, and is currently a director of the Clinton Foundation.<sup>189</sup>

There is little public information available on this investment.

#### **4.3.3.4. Claim by Eléctricas de Medellín Ingeniería y Servicios S.A.S.**

<b>Applicant</b>	Eléctricas de Medellín Ingeniería y Servicios S.A.S. (Colombia), one of three investors in the private consortium Empresa Energía Honduras (EEH).
<b>Project</b>	Nationwide energy distribution and reduction of energy losses.
<b>Legal basis</b>	Free Trade Agreement between Colombia, El Salvador, Guatemala and Honduras <sup>190</sup>

185 Association for a More Just Society (November 21, 2018). *Research 1: Quemados, el negociazo de la energía eléctrica.* [https://revistazo.com/docs/Investigacion\\_Quemados.pdf](https://revistazo.com/docs/Investigacion_Quemados.pdf)

186 Bohmer, L. (September 19, 2023). Guatemalan investors lodge CAFTA claim against Honduras, marking the 9th ICSID case brought against the state this year. *IA Reporter.* <https://www.iareporter.com/articles/guatemalan-investors-lodge-cafta-claim-against-honduras-marking-the-9th-icsid-case-brought-against-the-state-this-year/>

187 Commission for the Defense and Promotion of Competition. *Resolution n.º 005-CDPC-2018-YEAR-XI.* (April 12, 2018). <https://www.cdpc.hn/sites/default/files/Privado/Concentraciones/2018/%28No%2C%20005-2018%29%20Exp.%20No.189-NC-2-2018%20INTERENERGY%20HOLDINGS%20Vrs%20LATAM%20ENERGY%20CORP%2012-4-18%20%28003%29.pdf>

188 Ibid.

189 InterEnergy (2024). *Board of directors.* <https://interenergy.com/board-of-directors/>

190 Eléctricas de Medellín Ingeniería y Servicios S.A.S. v. Republic of Honduras. ICSID Case No. ARB/24/24.

ICSID Convention-Arbitration Rules. July 2, 2024. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/24/24>

<b>Initiation of lawsuit</b>	July 2, 2024 <sup>191</sup>
<b>Reason for request</b>	Measures related to non-compliance with the Public-Private Partnership (PPP) contract between the company and ENEE <sup>192</sup>
<b>Amount claimed</b>	US\$500 million <sup>193</sup>

Eléctricas de Medellín Ingeniería y Servicios S.A.S. brought its claim over differences pertaining to its Public-Private Partnership contract and alleged violations of its terms.

2014 reforms to the General Law of the Electric Energy Industry allowed ENEE to contract with private companies to distribute, generate and transmit energy. For decades, civil society organizations opposed the privatization of energy distribution. When the reforms were approved in 2014, the ENEE Workers Union (STENEE) also opposed the changes and mobilized for weeks to warn the population of the consequences this would have.

For years, energy distribution has resulted in technical losses. This has been one of the contributing factors to the poor financial state of ENEE, since it buys energy from private producers and then suffers losses in the energy grid including during distribution to consumers (households, companies, etc.). According to a report from the Association for a More Just Society (ASJ by its initials in Spanish), technical and non-technical energy losses represent between 8,000 and 9,000 million lempiras annually (approximately US\$320 to US\$360 million). In 2016, the EEH consortium, of which Eléctrica de Medellín Ingeniería y Servicios is part, was awarded a contract to distribute energy nationwide and reduce losses.<sup>194</sup>

When President Xiomara Castro and her government took office, officials in charge of ENEE expressed concern that EEH had never met its annual contractual obligations, including investments in the distribution network and reductions in energy losses. For example, in 2019 and 2020 the annual reduction target for energy loss in the contract with EEH was 3%, for a total reduction of 19% to 22%. Instead, according to independent evaluators, energy losses increased by almost 5%.

In addition, according to its contract, EEH was to invest a total of approximately US\$93.8 million in the distribution system to improve services in its first year of operations, and

191 Ibid.

192 CIAR Global (July 4, 2024). *Energética Colombiana to Arbitration with Honduras in ICSID*. <https://ciarglobal.com/energetica-colombiana-a-arbitraje-con-honduras-en-ciadi/>

193 Information received from sources of the Attorney General's Office.

194 Association for a More Just Society (n.d.). *The situation with the Empresa Energía Honduras (EEH) contract*. [https://asjhonduras.info/bibliotecaASJ/documentos/ss\\_electrico/4sse.pdf](https://asjhonduras.info/bibliotecaASJ/documentos/ss_electrico/4sse.pdf).

US\$105.6 million in the second year. However, the private company reported that it invested only US\$40.2 million and US\$44.8 million in its first two years respectively, while independent verifications place these figures between US\$10 million and US\$20 million below what the company reported.

For its part, EEH and others charge that the Honduran government also failed to meet its contractual obligations by not providing sufficient support to the company, including payments as and when required by the contract.<sup>195</sup> This was further complicated when the Castro administration took office and found ENEE in worse condition than before EEH was contracted.

In addition, since EEH took over collecting payments from consumers for their energy consumption, complaints have arisen over arbitrary, irregular and exorbitant electricity bills for homes and businesses throughout the country. According to the Honduran press, irregular charges were made to approximately 240,000 subscribers.<sup>196</sup> Households, especially low-income families, sometimes received electricity bills much higher than what they had actually consumed. This led people to protest, placing locked metal boxes over their energy meters or painting them to avoid getting charged outlandish amounts, which they believed were being manipulated by the energy distribution company. In other parts of the country, residents removed the meters from their homes and set them on fire in protest against exaggerated energy charges and blackouts.<sup>197</sup>



ENEE subscribers paint their meters in protest. Source: [elcomejamo.com](http://elcomejamo.com)

195 Ibid.

196 La Prensa (November 28, 2018). In December bill EEH must return what it overcharged to 240 thousand subscribers. <https://www.laprensa.hn/honduras/energia-honduras-tarifas-gobierno-cobros-intervencion-PVLP1237594#image-1>

197 Honduras HN News (August 12, 2020). Inhabitants of the El Carmen sector of San Pedro Sula remove energy meters from their homes and set them on fire. Facebook. <https://www.facebook.com/watch/?v=220561992662984>

When the contract with EEH expired in 2023, the government declared that it would not be renewed. ENEE subsequently re-assumed responsibility for energy distribution as part of restoring the public agency. However, upon termination of the contract and due to discontent between the two parties, both EEH and the State have filed at least four lawsuits in Honduran courts and complaints with the Public Prosecutor's Office against each other.

In the complaints filed against EEH, Minister of Energy, Erick Tejada, has alleged irregularities beginning with the bidding process; among them the lack of a legal framework for the EEH contract and EEH's inexperience with managing energy distribution.<sup>198</sup>

Similarly, ASJ has denounced irregularities and the ANC filed a complaint for acts of fraud with UFERCO in August 2021 against former ENEE manager, Jesús Mejía. Mejía has been mentioned in other corruption cases related to his tenure as the head of ENEE, including using his position to employ models and spouses of close political allies, such as the wife of convicted drug trafficker Tony Hernandez, brother of the former president.<sup>199</sup> According to the CNA, Mejía himself committed acts of corruption by authorizing payments to EEH despite the fact that the company did not comply with the terms of its contract. The CNA also implicated members of the Technical Committee of the Trust Fund for the recovery of energy losses in the same complaint (including a representative of COALIANZA) who was in charge of supervising and authorizing payments.<sup>200</sup>

Despite the many breaches and irregularities, EEH argues that this accountability process and non-renewal of its contract constitutes expropriation:

“Honduras intends, through the Attorney General’s office (PGR), to take control of the commercial systems that EEH operates (...) which clearly and in accordance with the rules that regulate relations between private parties and states may constitute expropriation directly transgressing the legal security of the contract.”<sup>201</sup>

*– EEH statement quoted by CIARGlobal, July 22, 2022*

198 National Program for the Reduction of Losses (January 22, 2023). ENEE filed its third legal process against the Consortium, Energía Honduras (EEH). <https://www.youtube.com/watch?v=PQC4eBeCZsY>

199 El Pulso (March 10, 2022). Tony Hernández and Jesús Mejía placed their trusted cadres in ENEE. <https://www.elpulso.hn/2022/03/10/tony-hernandez-y-jesus-mejia-colocaron-a-sus-cuadros-de-confianza-en-la-enee/>

200 Burgos, J. (August 12, 2021). CNA presenta a la UFERCO línea de investigación por fraude contra el exgerente de la ENEE, Jesús Mejía. Criterio. <https://criterio.hn/cna-presenta-a-la-uferco-linea-de-investigacion-por-fraude-contra-el-exgerente-de-la-enee-jesus-mejia/>

201 CIAR Global (July 22, 2022). Energy Company Honduras Threatens Honduras with International Arbitration. <https://ciarglobal.com/empresa-energia-honduras-amenaza-a-honduras-con-arbitraje-internacional/>

#### 4.3.3.5. Claim by X-Elio Energy S.L.

<b>Applicant</b>	X-Elio Energy S.L.
<b>Project</b>	No information available
<b>Legal basis</b>	Honduras-Spain Bilateral Investment Treaty
<b>Initiation of lawsuit</b>	August 8, 2024 <sup>202</sup>
<b>Reason for request</b>	The renegotiation of power generation contracts under the 2022 Electricity Law.
<b>Amount claimed</b>	No information available

Since 2015, X-Elio Energy has operated a solar project in Marcovia, Choluteca, in southern Honduras.

#### 4.3.3.6. Claim by Víctor Miguel Silhy Zacarías

<b>Applicant</b>	Víctor Miguel Silhy Zacarías (El Salvador)
<b>Project</b>	No information available
<b>Legal basis</b>	CAFTA-DR
<b>Initiation of lawsuit</b>	August 8, 2024 <sup>203</sup>
<b>Reason for request</b>	The renegotiation of power generation contracts under the 2022 Electricity Law.
<b>Amount claimed</b>	No information available

The claims from X-Elio Energy S.L. and Víctor Miguel Silhy Zacarías are represented by the law firm White & Case, the same firm advising four other energy sector investors suing Honduras over reforms introduced in the 2022 Electricity Law.

202 See: X-Elio Energy S.L. v. Republic of Honduras. ICSID Case No. ARB/24/31. ICSID Convention-Arbitration Rules. August 8, 2024. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/24/31>

203 Ibid.

#### **4.3.4. Claims related to Public-Private Partnerships: irregularities and costs to the State**

Public-Private Partnerships were promoted in Honduras under the 2010 PPP Law, which we analyse in Section 2, part 2.2.1. The claims from Autopistas del Atlántico, Palmerola International Airport and Eléctricas de Medellín Ingeniería y Servicios S.A.S. correspond to disputes over PPP contracts. For lack of information concerning the more recent claims from Operadora Portuaria Centroamericana and International Container Terminal Services Inc., we have not yet been able to confirm if these also correspond to differences over their PPP contract.

##### **4.3.4.1. Claims by Autopistas del Atlántico and others**

<b>Applicant</b>	<ul style="list-style-type: none"><li>• Autopistas del Atlántico, S.A. de C.V. (a consortium composed of Grodco, S en C.A. (Colombia), Grodco International S.A. (Costa Rica) and PRODECÓN S.A. de C.V. (Honduras))</li><li>• JP Morgan Chase Bank, N.A. (U.S.A.)</li><li>• Corporación Interamericana para el Financiamiento de Infraestructura S.A. (Panama)</li><li>• Moneda Alturas II Investment Fund (Chile)</li><li>• Moneda Latin American Debt Investment Fund (Chile)</li><li>• Global Opportunities Offshore, Ltd. (Cayman Islands) (owned by Goldman Sachs)<sup>204</sup></li><li>• Global Opportunities, LLC (U.S.) (owned by Goldman Sachs)<sup>205</sup></li></ul>
<b>Project</b>	Honduras Tourism Corridor that failed in 2018 with 26.38% of the works advanced and an investment of US\$42.8 million <sup>206</sup>

204 Securities and Exchange Commission (November 2, 2023). Official notice of an offering of securities that is made without registration under the Securities Act in reliance on an exemption provided by Regulation D and Section 4(6) under the Act. [amend]. <http://pdf.secdatabase.com/1567/0001999334-23-000002.pdf>.

OPENLEIs. (n.d.). [Global Opportunities Offshore Ltd. http://openleis.com/legal\\_entities/20WOJ0VM5GZD5TG1ZQ39/Global-Opportunities-Offshore-Ltd](http://openleis.com/legal_entities/20WOJ0VM5GZD5TG1ZQ39/Global-Opportunities-Offshore-Ltd)

205 Securities and Exchange Commission. Official notice of an offering of securities that is made without registration under the Securities Act in reliance on an exemption provided by Regulation D and Section 4(6) under the Act. [amend] (November 2, 2023). <http://pdf.secdatabase.com/1566/0001999334-23-000001.pdf>

206 Association for a More Just Society (ASJ). (September 3, 2018). *Analysis of the Structuring, Contracting, and Execution of the Honduras Tourism Corridor Concession Contract: Executive Summary*. <https://www.flipsnack.com/asjhonduras/resumen-ejecutivo-corredor-tur-stico.html>

<b>Legal basis</b>	The first Public-Private Partnership contract entered into in Honduras <sup>207</sup>
<b>Initiation of lawsuit</b>	April 12, 2023
<b>Reason for request</b>	The company claims breach of its contract for the suspension of the toll road in the face of community protest and cancellation of the contract in 2018. <sup>208</sup>
<b>Amount claimed</b>	US\$179,370,039 dollars <sup>209</sup>

“We will not pay this toll because if we do, we will not eat.”

– *Participant in the Dignity Camp, May 15, 2024*

In 2016, the company Autopistas del Atlántico, S.A. de C.V. (ADASA) detonated a 421-day social struggle at various points along the highway in the municipalities of San Pedro Sula and El Progreso when it installed booths and began charging tolls. This company, a consortium between Grodco, Sen C.A. (Colombia), Grodco International S.A. (Costa Rica) and PRODECÓN S.A. de C.V. (Honduras), had won the first public-private partnership contract with the now defunct COALIANZA for a thirty-year period for the Honduran Tourist Corridor.<sup>210</sup> After a twenty-seven month delay from the signing of the contract, ADASA secured financing for its project from Banco Ficohsa, JP Morgan Chase and Corporación Interamericana para el Financiamiento de Infraestructura S.A. (CIFI),<sup>211</sup> as well as a guarantee against political risk from the World Bank’s Multilateral Investment Guarantee Agency (MIGA).<sup>212</sup>

207 ADASA. (December 1, 2015). ADASA. <https://es.slideshare.net/slideshow/adasa/55716941>; Ramos, R. (November 27, 2015). Bank syndicate finances Tourism Corridor in Honduras. <https://lexlatin.com/noticias/sindicato-de-bancos-financia-corredor-turistico-en-honduras>

208 Bohmer, L. (April 5, 2024). ICSID Tribunal Rejects Honduras’ Argument that Claims Manifestly Lack Legal Merit Due to Investor’s Failure to Exhaust Local Remedies. Investment Arbitration Reporter. <https://www.iareporter.com/articles/icsid-tribunal-declines-to-decide-honduras-exhaustion-of-local-remedies-argument-in-expedited-proceedings/>

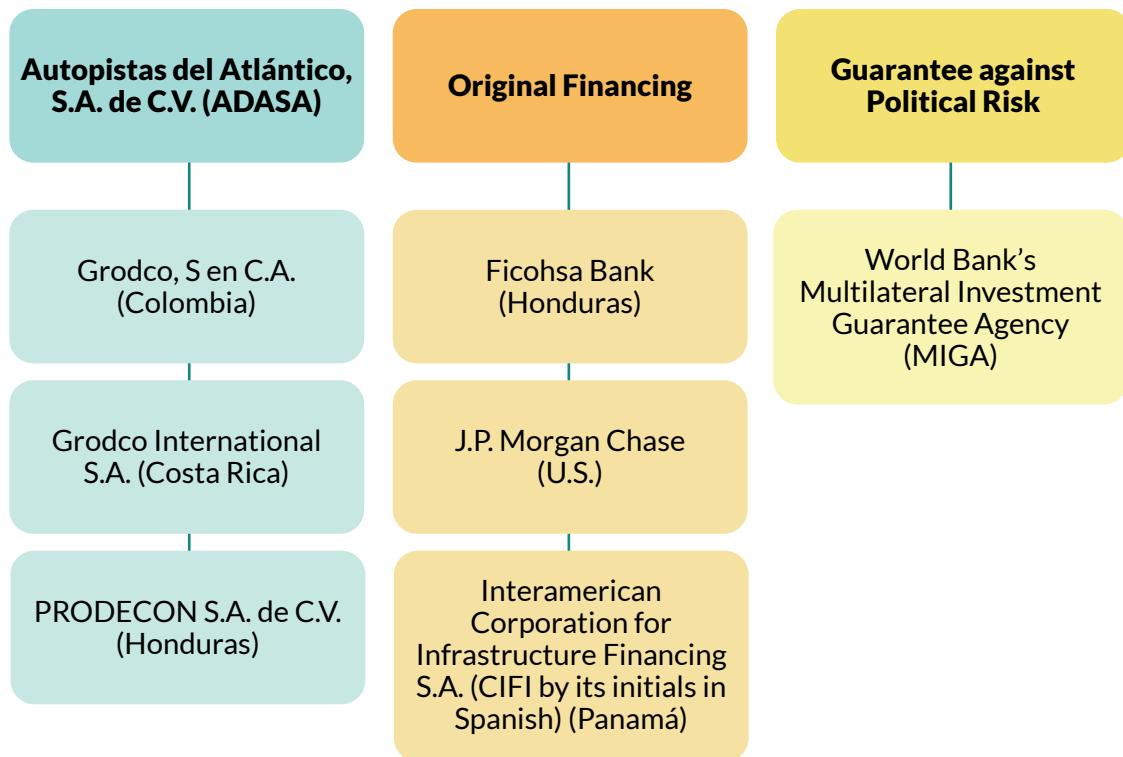
209 Information received from sources at the Attorney General’s Office.

210 ADASA. Ob. cit.

Ramos, R. Ob. cit.

211 Ibid.

212 Bnamericas. (April 24, 2015). Honduras tourism corridor tollroad gets World Bank support. <https://www.bnamicas.com/en/news/honduras-tourism-corridor-tollroad-gets-world-bank-support>



This investment was promoted by the government of President Juan Orlando Hernández as a breakthrough for the country's infrastructure that would improve the connection between the Atlantic and Pacific coasts, stimulate trade and tourism, generate employment and reduce transportation costs. The project involved the rehabilitation, expansion and improvement of 220 km of existing road between San Pedro Sula and La Ceiba in Atlántida, on the northern coast of the country, with the exception of a 6 km stretch that would have to be built.<sup>213</sup> But, the project was a failure and its contract was cancelled in 2018 with 26.38 % of the works advanced and an investment of US\$42.8 million.<sup>214</sup>

Although its original contract stated that it could only begin charging for the use of the road after construction was finished, with just 10% of the works complete Honduran officials gave approval to start charging vehicles traveling on this route in 2016, triggering the state's commitment to make payments to the company based on the

<sup>213</sup> Multilateral Investment Guarantee Agency, World Bank Group (November 11, 2014). *Environmental and Social Review Summary: Honduras Tourism Corridor*. [https://www.miga.org/sites/default/files/archive/Documents/ESRS\\_HONDURAS\\_Autopista\\_NOV\\_11\\_2014.pdf](https://www.miga.org/sites/default/files/archive/Documents/ESRS_HONDURAS_Autopista_NOV_11_2014.pdf)

<sup>214</sup> Association for a More Just Society (ASJ). (September 3, 2018). *Analysis of the Structuring, Contracting, and Execution of the Honduras Tourism Corridor Concession Contract: Executive Summary*. <https://www.flipsnack.com/asjhonduras/resumen-ejecutivo-corredor-tur-stico.html>

minimum annual guaranteed income.<sup>215</sup> As a result, the state would have to pay the company the difference between the minimum anticipated revenue and revenue earned from this point forward, leading the state to owe the company US\$110 million rather than the US\$42 million for early cancellation of the contract. This was one of several irregularities identified in the contract.<sup>216</sup> Directly affected communities took a stand against the toll booths for over a year as part of the Camp for Dignity, not missing a day, not even Saturday, Sunday, Christmas or Easter.



Women, men and young people who participated in this uprising considered the toll booths a “Monument to Corruption” and “stealing from the people, because the road was already in place and had been operating without toll booths”, as participants in the Camp for Dignity recalled during a meeting in El Progreso, on May 15, 2024. The Angry Citizens’ Movement (Mesa de Indignación Ciudadana) arose to defend their highway, which had been built and repaired for more than twenty years with taxes paid by the population, not with private capital. For residents in the municipality of El Progreso, the three toll booths violated their right to freedom of movement, as they had no alternative

215 Ibid.

216 Ibid.

way to travel.<sup>217</sup> In addition, some people are reported to have lost their lives because the toll booths were located at dangerous points along the highway.<sup>218</sup>

Contrary to the claims of officials – such as Roberto Pineda, then Minister of the Secretary for Infrastructure and Public Services (INSEP by its initials in Spanish) – about the promise of reduced transportation costs,<sup>219</sup> people who spent day after day at the Camp calculated that the project would result in a serious increase in the cost of living.

“The toll was charged traveling in one direction, and then on the way back too. We looked at the numbers, multiplying and calculating the cost, and it adds up to millions. We concluded that ultimately not even the bus companies would lose out, but rather the user – because it is who is going to end up getting charged these costs.”

*– Participant in the Camp for Dignity, in El Progreso, at a meeting on May 15, 2024*

In addition, they anticipated an increase in the cost of products arriving from outside along the same highway, putting even more pressure on household finances.

Despite conducting a peaceful protest, they faced repression, especially from national police.

“The police on more than one occasion fired live bullets, tear gas, and pepper gas, [which is] even more harmful and more aggressive to the eyes and lungs than tear gas. On many occasions one had to run, to throw yourself onto the riverbank to try and save your life.”

*– Participant in the Camp for Dignity, at meeting, May 15, 2024*

217 Radio Progreso HN (October 31, 2017). *For road sovereignty, Honduras pa'lante*. [Video archive]. YouTube. <https://www.youtube.com/watch?v=7LBXq0boorA>

218 Molina, E. (February 10, 2019). Toll ruins in tourist corridor have become a death trap. [La Prensa](https://www.laprensa.hn/honduras/trampa-mortal-ruinas-peajes-corredor-turistico-LCLP1257837) <https://www.laprensa.hn/honduras/trampa-mortal-ruinas-peajes-corredor-turistico-LCLP1257837>

219 Radio Progreso HN. Ob. cit.

When the government of Juan Orlando Hernandez managed to retain power in 2017, despite clear evidence of fraud in the national elections, the tollbooths were burned in the fervor of the protests.<sup>220</sup>

In addition to allowing an early start on toll collection, an analysis of this first Public-Private Partnership contract by ASJ in 2018 found many other irregularities. For starters, the contract was authorized without economic feasibility studies and without clarity on the direct and indirect beneficiaries. In addition, it left open the additional works that the investor could prioritize – increasing the value of the project from US\$98.2 million to US\$268.9 million, implying greater obligations from the government. The investor was then delegated to carry out its own technical studies despite its conflict of interest and how this weakened the state's position in the arrangement.

Based on the technical study carried out by the same company, the government agreed to adjust the minimum annual guaranteed income (IMAG by its initials in Spanish) without consulting the National Congress. According to the final modification to the contract, they agreed to US\$512 million IMAG during the first fifteen years, obliging the State to pay the company 91.5% of the difference between its actual recovered toll revenues and what had been estimated.<sup>221</sup> Following ASJ's analysis, the Special Prosecutor's Office for Transparency and Combating Public Corruption (FETCCOP by its initials in Spanish) opened an investigation, the results of which we were not able to find.

“Regarding the arbitration claim, [the company] should reflect on what they knew - they should have known that those who granted them permits were criminals, and that criminals should not get consideration in these things. The people should be suing them instead, because they made decisions behind the backs of the people without the people having told them to.”

*- Participant in Camp for Dignity, at meeting on May 15, 2024*

Even before the contract ended with the company's exit in 2018, the president of COALIANZA anticipated the possibility of arbitration based on Honduras' obligations in international treaties it has signed. Referring to the contract with Autopistas del

220 Primicia Honduras (December 6, 2017). Protesters Burn Three City Halls and Tollbooths in Honduras. <https://primiciahonduras.hn/manifestantes-queman-tres-alcaldias-casetas-peajes-honduras/>

221 Association for a More Just Society (ASJ). Ob. cit.

Atlántico, Miguel Ángel Gámez commented in 2017 to the *Radio Progreso* team, “If I fail [the company], I have to answer for that failure.”<sup>222</sup> With such favorable contract terms for the company, it was almost inevitable that a claim would arise. This was how a win-win situation was created for the investor, whether or not it finished the project, a situation that only harms the Honduran people.

#### 4.3.4.2. Palmerola International Airport Demand

<b>Applicant</b>	Palmerola International Airport S.A. de C.V. (PIA) (Honduras)
<b>Project</b>	Design, Construction, Financing, Operation and Maintenance of Palmerola International Airport <sup>223</sup>
<b>Legal basis</b>	Public-Private Partnership Contract
<b>Initiation of lawsuit</b>	September 12, 2023
<b>Reason for request</b>	The arbitration notice is not public, but it has been reported that the company alleges that the State has not fulfilled its part of the contract regarding the provision of certain works. In addition, the company alleges that the Government was planning to expropriate its concession in order to transfer it to Chinese investors. <sup>224</sup>
<b>Amount claimed</b>	US\$10 million <sup>225</sup>

Palmerola International Airport, S.A. de C.V. (PIA) is a subsidiary of Grupo EMCO, structured through Panama by its owner Lenir Pérez, part of the Honduran elite.<sup>226</sup> It is believed that Pérez won the Palmerola Airport concession because of his closeness to former President Juan Orlando Hernández, despite his lack of experience and limited financing capacity to carry out the project (according to the current administration).<sup>227</sup> Grupo EMCO also owns an open-pit iron ore mine in the municipality of Tocoa, which

222 Radio Progreso HN (October 31, 2017). Ob. cit.

223 Superintendence of Public-Private Partnership (SAPP). *Palmerola International Airport: Palmerola International Airport Concession Contract*. <https://www.sapp.gob.hn/palmerola>

224 Bohmer, L. (September 12, 2023). Airport Investor Makes Good on Earlier Threat to Lodge Contract-Based ICSID Arbitration Against Honduras. *IAReporter*. <https://www.iareporter.com/articles/airport-operator-makes-good-on-earlier-threat-to-lodge-contract-based-icsid-arbitration-against-honduras/>

225 Information received from sources at the Attorney General's Office.

226 Toledo-Leyva, C. (June 20, 2023). *German participation in Honduras airport under scrutiny*. DW. <https://www.dw.com/es/participaci%C3%B3n-alemana-en-aeropuerto-de-honduras-bajo-la-lupa/a-65844705>

227 Criterio (July 4, 2023). *Palmerola airport concession is a fraud: Xiomara Castro's government*. <https://criterio.hn/concesion-del-aeropuerto-de-palmerola-es-un-fraude-gobierno-de-xiomara-castro/>

has affected water sources and put environmental defenders at risk, with cases of criminalization and murder in recent years.<sup>228</sup>

PIA initiated arbitration against Honduras under the terms of the thirty-five-year public-private partnership contract it signed with the Hernández government in 2016,<sup>229</sup> alleging that the State had not fulfilled its part of the contract regarding the provision of certain works. However, not only does evidence exist of irregularities and non-compliance on the part of the investor, the arbitration suit creates further expenses for the State in regard to a contract that has been described by the National Anti-Corruption Council as highly unfavorable for the people, “clearly affecting the interests of the State of Honduras”<sup>230</sup> and “a risk to the State’s finances.”<sup>231</sup>

Faced with this situation, Xiomara Castro’s administration decreed the creation of the National Airport Service (SAN by its initials in Spanish) in April 2023 and announced its intention to take back responsibility for management of the airports serving Tegucigalpa.<sup>232</sup> Her administration has accused PIA of several irregularities in management of the contract. For example, PIA passed off “Munich Airports” as collaborating in the project when it was in fact only a consultant.<sup>233</sup> It has also been found to have overestimated construction costs<sup>234</sup>, and is suspected of misrepresenting passenger number projections on which basis the royalty to be received by the government from the project depends. In addition, the government alleges illegality and fraud in connection with a loan from the National Teachers’ Welfare Institute (INPREMA by its initials in Spanish),<sup>235</sup> as well as a direct award of US\$9 million for construction of civil works, carried out by companies that are part of the same conglomerate.<sup>236</sup> Furthermore, there was a long delay in concluding the project and costs were 80% higher than expected.

Overall, the contract terms favor only the investor. The state’s investment exceeds that made by the investor (US\$126.43 million state investment as of mid-2023 compared

228 Avila, J. and Mackey, D. (November 9, 2020). *The hidden connection of a U.S. steelmaker to the controversial Los Pinares mine in Honduras*. Latin American Center for Investigative Journalism. <https://www.elclip.org/la-conexion-escondida-de-una-siderurgica-de-ee-uu-con-la-polemica-mina-de-los-pinares-en-honduras/>.

229 Silva, F. (June 12, 2023). *Gobierno busca quitar concesión del Aeropuerto de Palmerola a empresa de Lenir Pérez*. Contracorriente. <https://contracorriente.red/2023/06/12/gobierno-busca-quitar-concesion-del-aeropuerto-de-palmerola-a-empresa-de-lenir-perez/>

230 National Anticorruption Council (CNA). (August 2020). *Inconsistencies in the Palmerola International Airport concession contract*. <https://www.cna.hn/inconsistencias-en-el-contrato-de-concesion-del-aeropuerto-internacional-de-palmerola-2/>

231 Ibid.

232 Silva, F. (June 12, 2023). *Gobierno busca quitar concesión del Aeropuerto de Palmerola a empresa de Lenir Pérez*. Contracorriente. <https://contracorriente.red/2023/06/12/gobierno-busca-quitar-concesion-del-aeropuerto-de-palmerola-a-empresa-de-lenir-perez/>

233 Criterio (July 4, 2023). *Palmerola airport concession is a fraud: Xiomara Castro’s government*. <https://criterio.hn/concesion-del-aeropuerto-de-palmerola-es-un-fraude-gobierno-de-xiomara-castro/>

234 Ibid.

235 Ibid.

236 Ibid.

with US\$64.59 million from PIA).<sup>237</sup> Moreover, the contract includes an exemption from taxes and duties during the life of the project, resulting in a loss of US\$16 million to date. The early authorization of the airport resulted in a cost overrun of US\$2.1 million for the State and, according to the Government, PIA had neither paid its municipal taxes nor the corresponding amount owed to the central government of US\$7.5 million.<sup>238</sup> There is also concern that the 10% fee on gross revenue from the project will only kick-in when more than 600,000 international passengers are registered per year – a difficult figure to achieve if we take into account Honduras' experience with Toncontín international airport.<sup>239,240</sup> The company denies this, saying that after two years of operation it is taking more than 800,000 passengers per year<sup>241</sup> and that it has invested more than US\$135 million in the project.<sup>242</sup>

#### **4.3.4.3 Claims from International Container Terminal Services & Operadora Portuaria Centroamericana**

<b>Applicant</b>	<ul style="list-style-type: none"> <li>International Container Terminal Services Inc. (ICTS) (Philippines)</li> <li>Operadora Portuaria Centroamericana, S.A. de C.V. (OPC) (Honduras)</li> </ul>
<b>Project</b>	Design, Financing, Construction, Conservation, Maintenance, Operation and Exploitation of the Container and General Cargo Terminal of Port Cortés
<b>Legal basis</b>	<ul style="list-style-type: none"> <li>In the case of ICTS: Law for the Promotion and Protection of Investments</li> <li>In the case of OPC: Contract</li> </ul>
<b>Initiation of lawsuit</b>	Two suits registered on August 16, 2024
<b>Reason for request</b>	No information available
<b>Amount claimed</b>	No information available

237 Ibid.

238 Ibid.

239 National Anticorruption Council (CNA). (August 2020). *Inconsistencies in the Palmerola International Airport concession contract.* <https://www.cna.hn/inconsistencias-en-el-contrato-de-concesion-del-aeropuerto-internacional-de-palmerola-2/>

240 See: Silva, F. Ob. cit.; Almendarez, D. (July 4, 2023). *Concesionaria de Palmerola niega señalamientos del Gobierno.* Tiempo. <https://tiempo.hn/concesionaria-palmerola-niega-señalamientos-del-gobierno/>

241 E&N. (November 29, 2023). Palmerola exceeds all passenger traffic expectations for 2023. <https://www.revistaeyn.com/eyn-brandlab/palmerola-supera-todas-las-expectativas-de-trafico-de-pasajeros-del-2023-BD16407732>

242 Bohmer, L. (September 12, 2023). *Airport Investor Makes Good on Earlier Threat to Lodge Contract-Based ICSID Arbitration Against Honduras.* Investment Reporter. <https://www.iareporter.com/articles/airport-operator-makes-good-on-earlier-threat-to-lodge-contract-based-icsid-arbitration-against-honduras/>

Operadora Portuaria Centroamericana, S.A. de C.V. (OPC) is a Honduran subsidiary of International Container Terminal Services Inc. (ICTS). On August 19, 2024, ICTS published a notice announcing that both companies had filed claims “due to the sovereign decision of Honduras to denounce the ICSID treaty on February 24, 2024.”<sup>243</sup> OPC signed a Public-Private Partnership contract with COALIANZA in March 2013.<sup>244</sup> In 2021, for the first time, the company sent a notice of intent of filing international arbitration after Honduras approved a concession contract for a new port in Omoa, Cortés.<sup>245</sup> So far, there is little public information available about these new claims in which both firms are represented by White & Case.

#### **4.3.5. Claim by the Argüello brothers and the community of Castaños de Choloma**

<b>Applicant</b>	<ul style="list-style-type: none"> <li>• Ernesto Argüello (U.S.A.)</li> <li>• Juan Carlos Argüello (U.S.A.)</li> </ul>
<b>Project</b>	Los Castaños de Choloma gated community
<b>Legal basis</b>	CAFTA-DR
<b>Initiation of lawsuit</b>	May 23, 2023
<b>Reason for request</b>	There is little information available, but it has been reported that the company alleges that Honduras violated the investor's rights to fair treatment, full protection and security, and against expropriation. <sup>246</sup>
<b>Amount claimed</b>	US\$100 million dollars + US\$2 million dollars for “moral damages” <sup>247</sup>

243 International Container Terminal Services, Inc. (2024, August 19). Securities and Exchange Commission: SEC FORM 17-C. [https://cdnweb.ictsi.com/s3fs-public/2024-08/International%20Centre%20for%20Settlement%20of%20Investment%20Disputes%20%28ICSID%29%20Registers%20the%20arbitration%20requested%20by%20ICTSI%20and%20OPCagainst%20the%20Republic%20of%20Honduras\\_0.pdf](https://cdnweb.ictsi.com/s3fs-public/2024-08/International%20Centre%20for%20Settlement%20of%20Investment%20Disputes%20%28ICSID%29%20Registers%20the%20arbitration%20requested%20by%20ICTSI%20and%20OPCagainst%20the%20Republic%20of%20Honduras_0.pdf)

244 MundoMarítimo. (2015, 2 de octubre). Sin modificación en su estado continuaría terminal de puerto Cortés, Honduras. <https://www.mundomaritimo.cl/noticias/sin-modificacion-en-su-estado-continuaria-terminal-de-puerto-cortes-honduras>

245 CIARGlobal. (2021, 27 de julio). Operadora Portuaria Reclama 10M\$ A Honduras Por Concesión Portuaria. <https://ciarglobal.com/operadora-portuaria-reclama-10m-a-honduras-por-concesion-portuaria/>

246 Bohmer, L. (May 24, 2023). *Honduras Faces its Sixth ICSID Arbitration this Year, as US Investors in Housing Project Lodge DR-CAFTA Claim*. Investment Reporter. <https://www.iareporter.com/articles/honduras-faces-its-sixth-icsid-arbitration-this-year-as-us-investors-in-local-housing-project-lodge-dr-cafta-claim/>

247 Ibid.

“What is taking place here is cheating people. The company promotes one thing, but sells another.”

– *Member of Bufete Estudios para la Dignidad, in interview, May 14, 2024.*

Los Castaños de Choloma is a housing project that was promoted to maquila (factory) workers in the Sula Valley with the promise that low-income families without the possibility of obtaining bank credit could enter into a deal to buy a home.<sup>248</sup> The investors promised security, green space and, eventually, a day care center and other services close to their place of work. The largest maquila in Honduras, owned by the Canadian company Gildan, is adjacent to the development.

The reality did not live up to expectations and, a year after 90% of the houses were flooded following tropical storms Eta and Iota in 2020, the community’s lawyers reported that the company Inter-Mac had not followed through with the property damage insurance of which the community members are beneficiaries.<sup>249</sup> Afterwards, community leadership reports that most residents of the gated community stopped making house payments to the company. Currently, two of the investors have filed a case with ICSID, while the community is working to consolidate its control over administration of the residential area.

#### **4.3.5.1. The Investors**

Shortly before the 2009 military coup, Clark Realty Capital, LLC obtained \$70 million in financing from the then Overseas Private Investment Corporation (OPIC)<sup>250</sup> for Inter-Mac International, Inc. to build and sell or rent low-income housing in Central America. In 2010, then President Porfirio Lobo Sosa reportedly signed a US\$100 million memorandum of understanding “for the construction of low-cost housing” with Inter-Mac International, represented by Xavier Argüello and in the presence of then U.S. Ambassador Hugo Llorens.<sup>251</sup>

248 The press reported that, in order to qualify for one of these houses, one had to “have at least 12 months of employment and a minimum income of 8,000 lempiras per month” (about \$300). Proceso Digital (May 12, 2010). Announcement of a millionaire investment in the housing sector. <https://proceso.hn/anuncian-millonaria-inversion-en-el-sector-vivienda/>

249 Bufete de Derechos Humanos, Estudios para la Dignidad (November 5, 2021). Communiqué 003-2021: Dignified Housing: A non-negotiable right. <https://www.facebook.com/photo/?fbid=427361402317607&set=a.122043532849397>

250 OPIC was an arm of the US Government and has been replaced since 2019 by the Development Finance Corporation which seeks to “bring private capital to the developing world,” according to its website: US International Development Finance Corporation.(n.d.). Overview. <https://www.dfc.gov/who-we-are/overview>

251 La Tribuna (August 5, 2010). Lobo signs agreement for the construction of low-cost housing.



Source: CRC Companies LLC

Inter-Mac International managed the project and HOLA Realty S. A. de C. V. was responsible for its construction and maintenance. HOLA Realty is owned by brothers Ernesto and Juan Carlos Argüello, based in Miami, Florida. In 2016, Clark Realty Capital, LLC reported having sold its interest in the project to a local party,<sup>252</sup> without specifying precisely to whom.

Of the Argüello brothers, Ernesto achieved some fame in 2012 when he participated in an NBC TV *reality show* called *Ready to Love*.<sup>253</sup> The show only lasted two episodes,<sup>254</sup> however Ernesto began to project an image as a desirable Latino entrepreneur, using the low-cost housing project in Honduras and his company Education Model Towns<sup>255</sup> to promote himself as a philanthropist.<sup>256</sup>

In a promotional video for the model towns built by the Argüello brothers, circulated by GQ magazine in 2019,<sup>257</sup> Ernesto introduces the concept using their first example of Castaños de Choloma. Model Towns are “communities with affordable housing that offer their residents a variety of opportunities for self-improvement, based on education, and with security.” However, the results have not lived up to the expectations raised.

252 CRC Companies (n.d.). Portfolio // Los Castaños de Choloma. <https://www.crccompanies.com/portfolio/los-castaños-de-choloma>

253 Estilo Magazine (April 20, 2012). Ernesto Arguello stars in Eva Longoria’s reality show. <https://www.revistaestilo.net/tendencias/ernesto-arguello-protagoniza-reality-de-eva-longoria-KEES386804.facebook.com/NBCReadyForLove>.

254 The Ashley (July 7, 2013). *The Couples of 'Ready for Love': Where are they now?*. <https://www.theashleysrealityroundup.com/2013/07/07/the-couples-of-ready-for-love-where-are-they-now/>

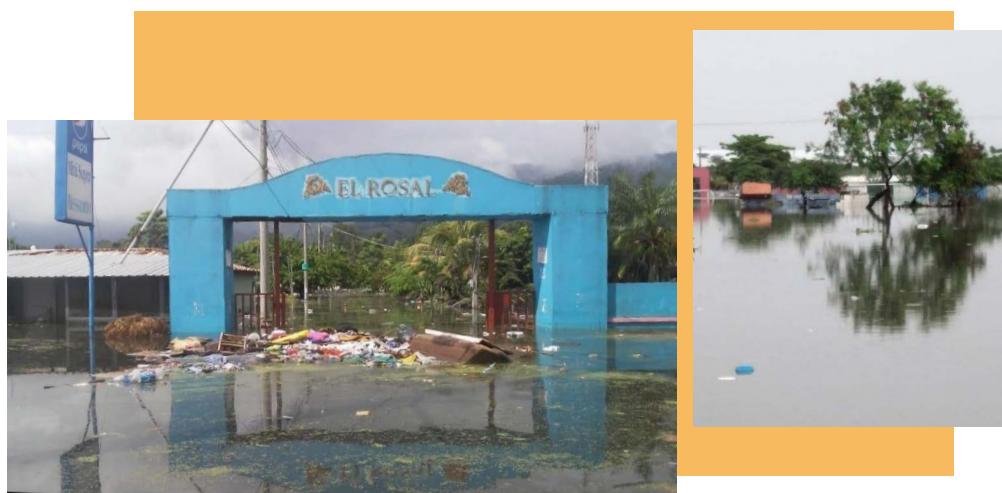
255 Education Model Towns is another company that Ernesto Arguello founded with his brother Juan Carlos.

256 NBCMiami (November 26, 2013). Reality TV star, Ernesto Arguello Gives Back to the Community. <https://www.nbcmiami.com/local/reality-tv-star-ernesto-arguello-gives-back-to-the-community/1909272/>

257 GQ. (October 16, 2019). Ernesto Arguello for education. <https://www.gq.com.mx/video/watch/ernesto-arguello-por-la-educacion-slash-3373281788001>

#### 4.3.5.2. The Deceptions

Ten years after the agreement for the construction of Los Castaños de Choloma was announced, the community made the news in early November 2020. Despite being in a supposedly flood-free zone, the houses had flooded almost to the roof after tropical storms Eta and Iota.<sup>258</sup> Residents complained of having lost everything. Some slept on the roof of their homes to prevent others from looting what little was left after the storms, saying they didn't know what was happening with their property damage insurance, and demanding that Inter-Mac's owners come forward.<sup>259</sup>



*The community flooded after the Eta and Iota tropical storms;  
Source: current member of the Castaños de Choloma leadership*

On November 9, Inter-Mac posted a statement on its Facebook page saying that “valuation work has begun and we are coordinating with insurance company evaluators to complete the verification and damage quantification process.”<sup>260</sup> In addition, they said they are in a process of reorganization and cleanup, “trying to restore water and power services as soon as possible.”

The disaster left behind by Eta and Iota precipitated discontent among many residents of Castaños de Choloma, unrest that had been growing over the years and was aggravated by the crises arising from the COVID-19 pandemic. One year after the disaster,

258 Panorama Informativo (November 19, 2020a). Vecinos denuncian atropellos de administradores de residencial los Castaños, Choloma. <https://www.youtube.com/watch?v=H2LVPX5yASc>.

Panorama Informativo (November 19, 2020b). Residencial los Castaños Choloma, flooded for the second time. [https://www.youtube.com/watch?v=\\_b5hzZTfF78](https://www.youtube.com/watch?v=_b5hzZTfF78)

259 Panorama Informativo (November 19, 2020a). Ob. cit.

260 Inter-Mac (November 9, 2020). Notice to all Tenants/Buyers of the Castaños de Choloma whether they are current or in arrears with their payments. Facebook. [https://www.facebook.com/photo/?fbid=3610976592294415&set=a.818889134836522&locale=ms\\_MY](https://www.facebook.com/photo/?fbid=3610976592294415&set=a.818889134836522&locale=ms_MY)

lawyers from the firm Estudios para la Dignidad, which now represents the community leadership of the Castaños de Choloma Residential Complex, reported that Inter-Mac Honduras “has not taken diligent action for the improvement and repair of the affected houses.”<sup>261</sup> Instead, the company “has developed a strategy of criminalizing ‘Castaños de Choloma’ residents, including threatening to evict families from the community illegally.” In addition, “the company continues to fail to provide information regarding the housing project and the insurance of which the families are beneficiaries, thus denying community members access to it.” Between November 2021 and February 2022, the law firm and representatives of the community filed a series of complaints, including in relation to the use of security guards, sometimes with National Police, to carry out illegal evictions of residents from their homes, “without prior notification” and “without the owners being present”<sup>262</sup>.

On February 4, 2022, the community filed a legal action to annul the payment demand processes the company had filed and that had given rise to the eviction attempts, alleging that the company had made a mistake with respect to the applicable regulations.<sup>263</sup> The same month, the community filed a complaint with the Public Prosecutor’s Office against Inter-Mac for coercion, given that it had limited the supply of drinking water to the community of around 5,000 people in retaliation for organizing in defense of their rights to decent housing.<sup>264</sup>

On August 30, 2022, the San Pedro Sula Prosecutor’s Office reported that an investigation was open against the companies Intermac S.A. de C.V. and Hola Realty S.A. de R.L. “for possible ongoing fraud related to the alleged poor housing construction.”<sup>265</sup> The community also filed an administrative complaint with the Ministry of Energy,

261 Bufete Estudios para la Dignidad (November 5, 2021). Communiqué 003-2021: Dignified Housing: A non-negotiable right. <https://www.facebook.com/photo/?fbid=427361402317607&set=a.122043532849397>

262 Bufete Estudios para la Dignidad (November 12, 2021). Inter-Mac security guards, raid home in the residential “Los Castaños de Choloma” Facebook. <https://www.facebook.com/watch/?v=1312150245941993>;

Bufete Estudios para la Dignidad (February 3, 2022). New eviction attempt in the community of Castaños de Choloma. Facebook. <https://www.facebook.com/EstudiosparalaDignidad/posts/pfbid0336iLmbSXRM BXwsBZEK5t4g3oq9ufgJEyLK9867LhJJYWDMW4t596Ws4MTakxSaRvI>

263 Bufete Estudios para la Dignidad (February 4, 2022). Press conference. Facebook. <https://www.facebook.com/EstudiosparalaDignidad/videos/1106943090119901/>

264 Bufete Estudios para la Dignidad (February 15, 2022). Press conference. Facebook. <https://www.facebook.com/EstudiosparalaDignidad/videos/501369151595029/>

Bufete Estudios para la Dignidad (February 10, 2022). Alert. Facebook. <https://www.facebook.com/EstudiosparalaDignidad/posts/pfbid031uuuAgKQhz2o2bYH9KLHmWRR1mpTVbkcwP1i38V6V8mknDzN27exN68XQxp7zxcrI>

265 Canal Ocho (August 30, 2022). SPS Prosecutor’s Office investigates allegations against the environment and fraud in construction of houses. <https://tnh.gob.hn/nacional/fiscalia-de-sps-investiga-denuncias-contra-el-medio-ambiente-y-estafa-en-construccion-de-casas/>

Natural Resources, Environment and Mines (SERNA by its initials in Spanish) demanding annulment and prohibition to renew two environmental licenses granted to HOLA Realty for construction of the homes “for having violated due process and violated human rights.”<sup>266</sup> They allege, among other shortcomings, that HOLA Realty’s Environmental Impact Study approved for its second environmental license does not include a Contingency Response Plan. The complaint also seeks redress for damages from SERNA and HOLA Realty, arguing that these gaps in the approval process “did not allow for contingency measures to be adapted to protect against tropical storms Eta and Iota and exponentially increased the damages.”<sup>267</sup>

In addition to the damage caused by the flooding, the community denounces the inadequate materials with which their homes were built. Representatives of the community<sup>268</sup> explain that, when it rained, water entered through the roof and walls and the materials rotted; in addition, the houses are small and the roof sheeting made for excessive overheating. They added that the promised day care center was never built and that it was difficult to file complaints with the company. Community representatives comment that they were victims of “false advertising” and “a big scam from the start”. They had add that their contracts were not purchase agreements, but rather a sort of lease for up to twenty or twenty-five years, at which point they could buy the property for one dollar. In the meantime, people had been paying weekly in dollars. Currently, it is difficult for the community to transition to a community management model of their own, since their documents are still in the company’s name.

The community’s lawyers report that, since 2022, the company has no longer been responding to their nullity actions, but instead took their complaint to ICSID. The investors are suing Honduras for \$100 million dollars, plus \$2 million for “moral damages”. At the same time, according to the municipality of Choloma, the company is currently in arrears to Los Castaños for almost 6 million Lempiras or around US\$240,000.<sup>269</sup>

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266 Bufete Estudios para la Dignidad. (2023, 23 de mayo). Reclamo administrativo presentado a la Secretaría de Recursos Naturales y Ambiente (SERNA).

267 Ibidem.

268 Meeting with Patronato de Castaños de Choloma and Bufete Estudios para la Dignidad, May 14, 2024.

269 Municipality of Choloma, Cortés. (Received May 16, 2024). Mora Actual de Los Castaños (R).

#### 4.3.6. Claim by JLL Capital: influence peddling and punishment for the people

<b>Applicant</b>	JLL Capital, S.A.P.I. de C.V. (Mexico)
<b>Project</b>	Investment in CA Capital Group, which provides payroll loans to government employees in Honduras, halted since 2018.
<b>Legal basis</b>	FTA between Mexico, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.
<b>Initiation of lawsuit</b>	February 13, 2023
<b>Reason for request</b>	Alleges expropriation, unfair treatment and denial of justice, arguing that it lost control over Grupo CA Capital following decisions in Honduran courts.
<b>Amount claimed</b>	US\$380 million <sup>270</sup>

JLL initiated its arbitration for approximately US\$380 million against Honduras in February 2023 under the Central America-Mexico FTA. The claim relates to its investment in Grupo CA Capital, a company that provides payroll loans to government employees in Honduras. JLL alleges expropriation, unfair treatment and denial of justice, arguing that it lost control over Grupo CA Capital following Honduran court decisions. The Mexican press reports that these decisions resulted from a network of complicity between several minority shareholders of Grupo CA Capital, who took advantage of the influence of the law firm Hernández y Asociados, owned by José Amílcar Hernández Flores, brother of JOH and a former military colonel.<sup>271</sup>

Amílcar Hernández is a loyal supporter of his brother. As an example, in 2019 he played a role in pressuring an imprisoned drug trafficker in Honduras, Nery Orlando López Sanabria, to not cooperate with US authorities in the provision of key evidence linking JOH to drug trafficking.<sup>272</sup> After refusing to give in to pressure, and shortly after Amílcar Hernández visited him in prison, Lopez Sanabria was murdered by a gang known for

270 Information received from sources at the Attorney General's Office.

271 Howard, G. (June 29, 2023). Financial vision. Quadratin Mexico. <https://mexico.quadratin.com.mx/vision-financiera-georgina-howard-442/>

272 Adams, D.A. and Ernst, J. (December 6, 2019). What did Nery Lopez know? Murder of imprisoned narco who talked to DEA splashes Honduran government. Univision. <https://www.univision.com/noticias/america-latina/que-sabia-nery-lopez-el-asesinato-de-un-narco-preso-que-hablo-con-la-dea-salpica-al-gobierno-de-honduras>

its ties to JOH and his cartel.<sup>273</sup> Amílcar Hernández, along with other family members, has moreover been linked to acts of corruption related to a security company that was awarded several contracts by the state during the JOH government, despite the huge conflict of interest.<sup>274</sup>

In the case of Grupo CA Capital and JLL, it is alleged that the law firm Hernández and Associates helped a group of minority shareholders take control of Grupo CA Capital. This ended in paralysis of the fund's operations in 2018 when a receiver, in collaboration with the minority shareholder group and a judge, allegedly looted the assets, affecting JLL<sup>275</sup> and its clients.<sup>276</sup> This dispute – a result of influence-peddling during the narco-dictatorship – has now become a punishment for the Honduran people, who will be on the hook if the case ends in favor of the investor.

#### **4.4 The chilling effect in evidence**

In Honduras, the neocolonial influence exerted by foreign actors such as the United States and International Financial Institutions on domestic policies is well recognized. Added to this, supranational arbitration claims are a powerful tool for transnational and national companies (where their investments are structured through companies abroad), which they often use to influence the decision making of public officials and against respect for human, indigenous, labor and environmental rights. This is known as “the chilling effect”.

This happens when a lawsuit, or the mere threat of a possible lawsuit, limits the decisions of authorities; manages to open negotiations under duress with governments to settle disputes outside the court process; or influences future decisions in favor of companies. For example, the fear of lawsuits may prevent governments from advancing public policies in favor of the interests of people and the environment, or cause them to desist from establishing these protections.

It is more difficult to document when governments change their actions in response to supranational arbitration proceedings or the threat of possible arbitration. However,

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273 Ibid.

274 Public Record (September 7, 2020). President Hernández and his family take advantage of pandemic to do business. <https://www.expedientepublico.org/exclusiva-presidente-hernandez-y-su-familia-aprovechan-pandemia-para-hacer-negocios/>

275 Howard, G. (June 29, 2023). Op.cit.

Hilaire, V. (April 14, 2023). Exclusive: Mexican firm seeks \$380 million from Honduras over blocked unit, Reuters. <https://www.reuters.com/world/americas/mexican-firm-seeks-380-mln-honduran-state-over-blocked-unit-2023-04-14/#:~:text=MEXICO%20CITY%2C20April%2014%20>

276 Secretariat of Infrastructure and Public Services (July 29, 2022). Press Release. <https://hch.tv/wp-content/uploads/2022/07/Comunicado-dePrensa-INSEP-2022.pdf>

there is evidence to suggest that some of the corporate claims underway, and the threat of others against Honduras, are weighing on the decision making of state entities in several economic sectors.

#### **4.4.1. Chilling effect of ZEDE claims**

The Próspera Group's gigantic suit for almost US\$11 billion and the threat of one from ZEDE Ciudad Morazán clearly seek to contain the current administration's efforts to dismantle the regulatory framework that enables ZEDEs. The implication is that one cannot change what has already been decided, even if it was determined under a corrupt, despotic and criminal regime that acted against the interest of the people to cede sovereignty over their territory to private parties.

It makes us question to what extent this multi-billion lawsuit, and the threat of at least one other claim, have influenced the failure by Congress to ratify the repeal of the constitutional reforms that created the ZEDE figure, as well as the lack of government action to stop the expansion and operations of investors that proclaim themselves as ZEDEs.

#### **4.4.2. Chilling effect of the energy sector's claims**

With regard to the seven lawsuits filed against Honduras concerning reforms to the generation and distribution of electricity, it seems clear that at least two lawsuits are aimed at influencing negotiations with the government. Furthermore, it is still possible that other companies involved in the renegotiations may decide to sue. As a result, the state is under great pressure in its efforts to bailout the public energy company.

It is notable that the ICSID arbitration process in the two claims from Norwegian investors Scatec ASA, Norfund and KLP Norfund Investments AS, over contracts for the Agua Fria and Los Prados projects, has been repeatedly suspended since December 2023.<sup>277</sup> This indicates that the companies are seeking a settlement with the State outside of arbitration, which public officials have confirmed to the research team for this report. The question asked by communities affected by the Los Prados project is, "in

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277 Scatec ASA v. Republic of Honduras. ICSID Case No. ARB/23/12. International Centre for Settlement of Investment Disputes. *ICSID Convention - Arbitration Rules*. April 21, 2023. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/12>; Norfund and KLP Norfund Investments AS v. Republic of Honduras. ICSID Case No. ARB/23/13. International Centre for Settlement of Investment Disputes. *ICSID Convention - Arbitration Rules*. April 21, 2023. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/13>

exchange for what?" They fear that caught up in the negotiations is not only the price of electricity, but also the expansion of an unwanted project that has already had negative impacts.

At a meeting in May 2024, lawyers' collective RADDH spoke about Honduras as a "victim" of these investments, linked to corruption, "that seek to pressure the state and continue looting". They went on to say that it is like "negotiating with a gun to the head" while at the same time "cleaning up the [corrupt] process" out of which these contracts were first granted, and which resulted in the repression of affected communities. For the people represented by RADDH and others in the country opposed to energy projects – such as the Agua Zarca hydroelectric project and the struggle of Berta Cáceres and COPINH – the possible threat of more lawsuits could be another element bringing pressure on the government to prevent it from acting with full respect for collective rights and annulling these contracts.



Justice for Berta. COPINH; Source: Karen Spring

#### 4.4.3. Chilling effect of the mining sector's claims

To date, Honduras has not experienced an arbitration claim from the mining sector, one of the industries that regularly uses ISDS to lobby for their interests when their investments face regulatory impediments, changes in taxation or resistance from

affected communities.<sup>278</sup> However, there are indications that mining companies have been threatening possible lawsuits in their eagerness to contain the current administration's stated intentions to strengthen regulation of the sector and the efforts of affected communities and social organizations to halt mining projects.

After assuming the presidency in early 2022, Xiomara Castro declared that she would no longer issue permits for open-pit mines and that she would favor the protection of water and forests.<sup>279</sup> One month later, on February 28, 2022, the Ministry of Energy, Natural Resources, Environment and Mines (SERNA) issued a communiqué declaring "all Honduran territory free of open-pit mining" and announcing "the review, suspension and cancellation of environmental licenses, permits and concessions".<sup>280</sup> However, as soon as this statement was made, it is likely that mining companies threatened to bring claims, contributing to the government diluting its commitment and delaying its fulfillment.<sup>281</sup>

As evidence, the day after the SERNA announcement, Canadian mining company Aura Minerals issued a press release stating that it was working to "understand the implications".<sup>282</sup> Five days later it issued another bulletin stating that the announcement was unlikely to have implications for its open pit gold mine, in spite of irregularities in its operations. It cited SERNA's minister as having said at a press conference that the government would focus on unregulated mining activities and that mining companies that have their permits in order would be able to continue with their activities.<sup>283</sup>

For years, Aura Minerals' open pit gold mine in Copán has been the focus of conflict and questioned for the illegal excavation of the cemetery in the community of Azacualpa – including for not complying with orders from SERNA and the Supreme Court of Justice

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278 Moore, J. and Pérez Rocha, M. (2019). Extractivism Casino: Mining companies gamble with peoples' lives and the sovereignty of Latin American countries using supranational arbitration. *Mining Watch, IPS, CIEL*. <https://ips-dc.org/wp-content/uploads/2019/06/ISDS-Mining-Latin-America-Report-Formatted-SPANISH.pdf>.

279 Hernández, B. (April 5, 2024). Xiomara Castro lied: mining persists despite her promises to stop this activity. Criterio. <https://criterio.hn/xiomara-castro-mintio-mineria-persiste-pese-a-sus-promesas-de-parar-esta-actividad/>

280 SERNA, Communiqué, February 28, 2022; <https://twitter.com/sernaHN/status/1498396575520935939?s=20>.

281 Hernández, B. Ob. cit.

282 Aura Minerals, Inc. (March 1, 2022). Aura acknowledges Press Release by the Honduran Ministry of Energy, Natural Resources, Environment and Mines. <https://api.mziq.com/mzfilemanager/v2/d/7e088be0-b725-4cba-ab5e-4969a4ac92af/147fc2eb-8670-7b77-36e7-f2ef8db589df?origin=1>

283 Aura Minerals, Inc. (March 6, 2022). Aura acknowledges new press releases issued and press conference held by Honduran authorities; mining companies with permits in good order allowed to continue mining activities. <https://api.mziq.com/mzfilemanager/v2/d/7e088be0-b725-4cba-ab5e-4969a4ac92af/b580b52a-a873-9b76-e8a3-760002a979f2?origin=1>

to suspend activities.<sup>284</sup> However, Aura Minerals is listed on the Canadian stock exchange and could invoke the Canada-Honduras FTA if it feels its investment is being affected.



San Andrés Mine, Copán; Source: Karen Spring

The Honduran government also moved quickly to limit the scope of its pronouncement on open pit mining.<sup>285</sup> When questioned directly by AFP media about Aura Minerals and the Honduran mining company Los Pinares, two weeks after issuing its pronouncement, the SERNA minister said that these operations could continue and that the blame for what has happened with the company's operations lies with the State.

284 Bessi, R. (April 14, 2022). Canadian mining company ignores legal order to stop detonations in Honduras. Avispa Midia. <https://avispa.org/minera-canadiense-ignora-orden-legal-de-detener-detonaciones-en-honduras/>

285 Palencia, G. (March 4, 2022). Honduran minister says new mining restrictions not retroactive. <https://www.marketscreener.com/quote/stock/AURA-MINERALS-INC-50061019/news/Honduran-minister-says-new-mining-restrictions-not-retroactive-39670272/>

"We have had several talks with different sectors so far and the first step is to accept historical errors. It is a historical error of this Secretariat that there has not been sufficient supervision, that it has not provided spaces for conciliation and that this has led to violence. It is the state's problem – not of our administration, but a historical mistake and our duty as officials is to accept it and move forward."<sup>286</sup>

– *Secretary of Natural Resources and the Environment, Lucky Medina, March 22, 2022*

As for Los Pinares mining company, it is possible that since 2022 the threat of a lawsuit is contributing to delays in halting its open pit iron oxide mine and associated installations. This project threatens the Guapinol and San Pedro rivers, as well as the Montaña de Botaderos Carlos Escaleras National Park, whose core area was reduced in 2013 by Congress to make way for the approval of mining concessions for this project.<sup>287</sup> This company is registered in Panama and its owners, Lenir Pérez and Ana Facussé, are members of the Honduran elite. Lenir Pérez is known for his close relationship with the JOH administration and his firm also initiated the Palmerola International Airport arbitration claim, discussed in detail in section 4.3.4.2.

Members of the Municipal Committee for the Defense of Common and Public Goods of Tocoa have filed numerous complaints against this mining project concerning, among other irregularities, the admission of fraudulent documentation by officials in the approval of the mine's license. In response to their struggle, the community has faced serious threats, militarization, criminalization and violence.<sup>288</sup> In addition, the local mayor has consistently acted in favor of the company and not the local population.

In May 2024, after a two-month delay, the Committee, together with its allies, achieved the publication of Decree No. 18-2024 for the recovery and restoration of the core zone

286 El Financiero (March 11, 2022). *Large scale mining in Honduras will continue to operate with better "environmental practices".* <https://www.elfinancierocr.com/cables/gran-mineria-en-honduras-seguira-functionando-con/WZSAV5FZ2RES3L6DGC4YVFEKGY/story/>

287 Cárcamo, A. (April 29, 2024). When will decree 18-2024 that recovers the core zone of Carlos Escaleras National Park be published in La Gaceta? Centro de Estudio para la Democracia. <https://cespad.org.hn/en/cuando-se-publicara-en-la-gaceta-el-decreto-18-2024-que-recupera-zona-nucleo-del-parque-nacional-carlos-escaleras/>

288 Hernández, B. Ob. cit.

of the national park.<sup>289</sup> This decree led to the announcement that the environmental permit for the project will not be renewed,<sup>290</sup> and to two resolutions from the Honduran Institute of Geology and Mining (Inhgeomin) against the extension of two of the company's mining concessions.<sup>291</sup> A public official interviewed for this report admitted that it is possible that these actions could lead to another lawsuit, without indicating whether or not this is influencing the state's decision making.



*Demonstration for the freedom of jailed water defenders from Guapinol;*  
Source: Juan Esquivel (FSAR)

Another possible threat from the mining sector may arise from Agregados del Caribe S. de R.L. de C.V. (Agrecasa),<sup>292</sup> a subsidiary of Vulcan Materials Company, which already has an arbitration suit for almost \$2 billion dollars against Mexico over measures that limit

289 Red Nacional de Defensoras de Derechos Humanos en Honduras (National Network of Women Human Rights Defenders in Honduras) (May 13, 2024). *Decree 18-2024: An achievement of the community struggle that defends the commons.* <https://redefensorashn.red/decreto-18-2024-un-logro-de-la-lucha-comunitaria>

290 According to the Comité Municipal en Defensa de los Bienes Comunes y Públicos in July 2024, Inhgeomin resolved not to renew the "ASP" mining license of Inversiones Los Pinares in Carlos Escaleras National Park, one of two mining concessions held by Los Pinares. <https://x.com/guapinolre/status/1811811299422068905>.

291 Perdomo, M. (July 28, 2024). Niegan prórrogas de concesiones mineras en Tocoa, citando decreto 18-2024. Criterio. <https://criterio.hn/niegan-prorrogas-de-concesiones-mineras-en-tocoa-citando-decreto-18-2024/>

292 Bu, A. (May 17, 2024). Community in Puerto Cortés demands cessation of mining exploitation; Government responds with repression. Contracorriente. <https://contracorriente.red/2024/05/17/comunidad-en-puerto-cortes-exige-cese-de-explotacion-minera-el-gobierno-responde-con-represion/>

the expansion and continuity of its gravel quarry in the state of Quintana Roo.<sup>293</sup> A claim against Honduras could potentially arise from the recent community protests in Puerto Cortés that are protesting the negative effects on their homes and water sources, and the non-compliance with promises of benefits after eighteen years of operation of the open-pit gravel quarry.

Since early May 2024 when community members from Brisas de Tramade began blocking roads between Puerto Cortés and San Pedro Sula, demanding that the company leave, Honduran authorities have carried out several inspections and imposed a temporary suspension of the project.<sup>294</sup> This process has reportedly precipitated visits to government offices from the company's lawyers who have threatened a possible lawsuit, saying that any action against its operations will cost the state a lot of money. It is unclear so far whether or not this is influencing decision making by state agencies.

#### **4.5 Conclusions concerning the mafia-style corporate claims**

To conclude, there is a lot of awareness in Honduras about the *de facto* status of powerful Honduran families as well as the influence of foreign actors over public policy, especially the United States and International Financial Institutions such as the World Bank and others. It is also well known in the country how companies, including both foreign and domestic investors in Honduras, enjoy privileged political and economic connections with which they may try to influence decisions in their interests, and to exploit the labor of Hondurans in order to extract natural resources at low cost.

This report analyzes in depth another exclusive privilege of transnational corporations, whether with foreign or domestic capital, with which they can influence public policy decisions and use arbitration claims to shield themselves against measures that affect their profits, or to speculate on possible gains even after investments fail. This is an urgent analysis due to the avalanche of lawsuits facing the country, which we view as a corporate assault against efforts to overcome the aftermath of the 2009 coup d'état.

The historical reality of exploitation and dispossession in Honduras deepened after June 2009 with the installation of the narco-dictatorship and the further entrenchment of neoliberal policy. Previously resisted policies were imposed, such as the further

293 CIAR Global (April 3, 2023). *Vulcan increased its arbitration claim against Mexico to US\$1.9 billion.* <https://ciarglobal.com/vulcan-aumento-su-reclamo-en-arbitraje-contra-mexico-a-1-900m-de-us-dolares/>

294 Bu, A. Ob. cit.

El País. (July 11, 2024). *Amanece tomece la autopista de Puerto Cortés a San Pedro Sula.* <https://www.elpais.hn/amanece-tomece-la-autopista-de-puerto-cortes-a-san-pedro-sula/>

privatization of the National Electric Energy Company (ENEE) and the promotion of Public-Private Partnership (PPP) contracts for infrastructure and transportation projects. Perhaps the most emblematic of the reforms in this period was the creation of the ZEDE concept as a libertarian dream and an extension of the idea of enclave investments or free trade zones that seeks to cede territorial sovereignty to private companies.

#### **4.5.1 The investment protection system: justice for corporations, not for people**

Arbitration claims are made possible by the existence of a set of clauses in free trade agreements, bilateral investment treaties, national investment laws and contracts. ISDS allows foreign investors to bypass national courts and bring their claims against States directly in international investment arbitration tribunals. Thus, arbitration is considered a “supranational” mechanism: a system of “parallel justice” at the international level that ignores, and often overrules, national justice.

Indeed, the foreign investment protection system is asymmetrical and one-sided, as it is an exclusive tool for transnational investors that, despite illegalities, abuses, corruption, repression and lack of justice for affected communities, allows them to bring claims against sovereign states. At the same time, it allows corporations and their representatives, in an obscure manner and behind closed doors, to use the threat of potential lawsuits to try to influence the scope or implementation of policies important for public welfare and environmental protection.

In Honduras, transnational corporations may gain access to sue the government through four legal instruments:

1. Eight Bilateral Investment Treaties (BITs)
2. Twelve free trade agreements (FTAs) including the United States-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR)
3. The Law for the Promotion and Protection of Investments approved in 2011
4. Contracts entered into by the state with foreign and domestic investors

Since 1999 Honduras has faced 19 claims, 15 of which are still pending; three were settled in favor of the investor and one was settled outside of arbitration. On ten occasions the sources of the claims have been BITs and FTAs, in three instances they have come via the National Investment Law, and six times via contracts. All claims against Honduras have been brought at ICSID.

#### **4.5.2 Mafia-style suits**

We describe these lawsuits as ‘mafia-style’, given that the investments involved are, in general, plagued by irregularities and corrupt administration. In addition, many of these investments were imposed against the will of the people or are harmful to the public interest, having been facilitated in the context of the repressive government of Juan Orlando Hernandez (2014-2022). In many instances, investors have had direct or indirect links to criminal networks.

We argue that the claim brought by the Rosenthal family’s Inversiones Continental (Panama), initiated against Honduras in 2018 for US\$1 billion, is the first of these “mafia-style” lawsuits because it reflects a dispute between the Honduran powers-that-be and the personal interests of former President Juan Orlando Hernández.

As of 2023, there have been fourteen other mafia-style lawsuits and further threats.

Most of the nineteen claims against Honduras were filed by investors from more industrialized countries: four are from the United States and six are European. Nine have been filed by Latin American investors, three of them involving domestic investors.

The 2009 coup d'état and the imposition of the narco-dictatorship were rejected by much of the population; similarly there have been important processes of resistance to investments that have brought claims against the State. As a result, we find that these suits are also being brought against the people who rose up to resist harmful projects that were imposed through repression and in violation of their rights.

In six of the fifteen pending claims, there is resistance from affected populations against these investments. Starting with the ZEDEs, resistance arose from the directly affected communities, such as Crawfish Rock on the island of Roatán, and also at the national level due to their importance of this matter for the entire country.

Despite threats and the criminalization of community members, local resistance persists against the Los Prados solar energy project of Norwegian investors Scatec, Norfund and KLP - because of the impacts it on local water resources, food sovereignty and the environment. The investor group has brought two claims against Honduras for a total of US\$400 million under the National Investment Law, and communities fear this could influence renegotiations of these contracts, rather than their cancellation, to allow the expansion of the project against their will.

The privatization of electricity distribution and collection of payments in the contract with Empresa Energía Honduras (EEH) provoked many complaints about arbitrary, irregular and exorbitant electricity bills. This led to protests, including people placing locked metal boxes over their energy meters or painting them to avoid irregular charges. Now, Colombian investors are suing the country for US\$500 million under the Free Trade Agreement between Colombia, El Salvador, Guatemala and Honduras.

Residents from San Pedro Sula and El Progreso rose up for 421 days against the payment of tolls on highways (originally built with taxpayer money) given the negative impacts that the privatization of mobility would have on the household economy. Despite having completed only 10% of the works agreed to in the contract, Honduran authorities allowed the company to go ahead with the collection of tolls in 2016. The toll booths became known as a "monument to corruption". The company Autopistas del Atlántico and a group of financiers, including JP Morgan Chase Bank and two Goldman Sachs funds, are now suing the state for \$180 million under the Public-Private Partnership contract over this project that failed in 2018.

Brothers Ernesto and Juan Carlos Argüello, of Miami, are suing Honduras under CAFTA-DR for \$100 million plus \$2 million in "moral damages". They built a gated community known as "Los Castaños de Choloma" that was promoted to maquiladora (factory) workers in the Sula Valley as a safe place for their families to live and an opportunity to become homeowners when they could not otherwise obtain bank loans. Based on this project, Ernesto Argüello cultivated a reputation as a well-meaning philanthropist dedicated to building socially responsible housing in Latin America. But villagers complain that the housing was of poor quality and, after tropical storms Eta and Iota in 2020, the investors failed to make the insurance payments owed. The community is now struggling to take control of the management of their own lives and homes.

Given highly unfavorable terms for the Honduran people, and the resistance that many of these projects have provoked, these investments have little legitimacy in the country. It is unfair that the Honduran people should now pay even one Lempira more to “compensate” transnational corporations for their relentless need for profit. These investors are the ones who really owe a debt to the people, not the other way around.

The known amounts claimed in the fifteen pending suits add up to US\$13.958 billion. This represents 40% of Honduras’ GDP in 2023, or almost four times the value of the approved public investment budget in 2024.

The exorbitant sum of almost US\$11 billion that ZEDE Próspera is demanding from the government is equivalent to almost three times the approved Public Investment Plan for 2024. Próspera’s claim against Honduras is under CAFTA-DR. Próspera does not meet the legal requirements that were first established to develop a ZEDE, but has nonetheless filed this lawsuit to pressure the government to allow it to exist.

Beyond the amounts of money being claimed, these suits are seek to influence public policy decisions in the country, a phenomenon known as “the chilling effect”. They are, for example, seeking to slow down efforts of the current government administration to dismantle the ZEDE legal framework and to stop their expansion, to restore the National Electric Energy Company and to retake control of airport infrastructure. Moreover, they represent an impediment against an effective response to demands from affected communities who reject the energy and mining projects that threaten their dispossession and displacement. The logic of the companies is simple: if the Honduran government or the communities affected do not allow them to do business, they demand multi-million-dollar compensation from the country – not only for what they have already invested, albeit irregularly, but also for their expectations of future profits.

For all these reasons, it is necessary to consider strategies for exiting this unjust system.

## 5. Exits from the transnational investment protection system

As we have seen throughout this report, the problem facing Honduras extends beyond the investor-state dispute settlement (ISDS) mechanism. This mechanism allows investors to sue, but it is one cog in a set of clauses that are cited by investors at the time of making claims (see section 3.1). In other words, the heart of the problem is the substantive rights granted to investors; when an investor believes that the state has violated that one of these rights (or privileges), then it may use ISDS to bring a multi-million claim appears in an international arbitration center. If these clauses did not exist in international treaties and in laws and contracts, claims could not be brought in international arbitration: they would have to be brought in national courts, as was the case until the 1990s, when BITs and FTAs began to proliferate.

In February 2024, Honduras announced its decision to withdraw from ICSID, which took effect in August 2024. This is undoubtedly an important move as it is the arbitration center that most foreign investors globally turn to. However, again, ICSID is just another cog in the mechanism of investor privileges. In other words, even though Honduras may not be part of ICSID, this does not mean that investors will necessarily stop suing the country in international arbitration.

As we previously explained, Honduras is today subject to four legal instruments that entrench the system of privileges for foreign investors: FTAs containing ISDS, BITs, the Law for the Promotion and Protection of Investments (2011) and contracts between the state and companies (such as PPPs). We have argued here that the main problem is the “protection” given to investments through such international treaties, national laws and contracts. Thus, the problem is the set of clauses that give privileges to the investor: indirect expropriation; fair and equitable treatment; national treatment; non-discriminatory treatment; prohibition of performance requirements; prohibition of restrictions to capital movements; full protection and security, etc.

### 5.1. Successful system review strategies

There are numerous strategies that states can use to exit from investment protection treaties and ISDS. A number of governments are already following this path.

### **5.1.1. Ecuador: Comprehensive Audit Commission on Investment Treaties and the Arbitration System**

The 2008 Constitution of Ecuador establishes in its article 422 that “No international treaties or instruments may be entered into in which the Ecuadorian State cedes sovereign jurisdiction to international arbitration in contractual or commercial disputes between the State and private natural or juridical persons.” Following, in 2009, the government of Rafael Correa withdrew from the ICSID Convention and in 2010 began the process of denouncing investment agreements.

In 2013, the Government commissioned the creation of a Comprehensive Audit Commission on Investment Treaties and the Arbitration System of Ecuador (CAITISA). This commission was comprised of experts from civil society, Ecuadoran government officials, academics and lawyers. The final report was presented in May 2017, containing compelling conclusions that pushed the Government’s decision to terminate the sixteen remaining BITs in force in Ecuador.

An audit committee is essential, among other reasons, because:

- It highlights the commitments associated with the signing of the treaties and reveals, using empirical evidence, whether these were fulfilled.
- It exposes how ISDS operates based on the domestic and foreign actors involved in the claims, including law firms and arbitrators.
- It demonstrates how foreign investors have performed locally, exposing the real effects of investments and their impacts on human, labor and environmental rights.
- It reveals the impacts of the arbitration system on the state’s regulatory capacity and the pressure that lawsuits put on state coffers.

### **5.1.2 South Africa: Termination of BITs**

In 2009, South Africa issued a critical assessment report of its investment policy which showed the imbalance between investor rights and regulatory policy space. As a result, the 2015 Investment Protection Act was enacted, which limits the definition of foreign investment, excludes Fair and Equitable Treatment, curtails Full Protection and Security, and replaces ISDS arbitration with state-to-state arbitration and a requirement to

first exhaust local remedies. This law was rejected by opposition parties because they assumed that it would scare away investments, but this has not happened.

The Act also established the Government's intention not to renew its BITs and to conclude new BITs only for compelling economic and political reasons. In fact, during the process of debating the new law, the South African government decided to unilaterally terminate BITs with nine European Union countries, including Belgium-Luxembourg, Spain, Italy and Germany. South Africa denounced a total of ten BITs, leaving eleven in force.

The new law did not scare off foreign investment. For example, since the BIT with Germany was cancelled, South Africa's main foreign investor, German firm Volkswagen, has not only stayed, but has exponentially expanded its investment in the country.<sup>295</sup>

### **5.1.3. Brazil and India: Development of their own treaty model**

Some of the countries that denounced their BITs decided at the same time to develop new models of investment protection treaties. Two countries that have established different models of investment treaty are Brazil and India. In 2015 Brazil signed its first Investment Cooperation and Facilitation Agreements (ICFTAs) with some Latin American countries (Mexico, Chile, Colombia) and some African countries (Mozambique, Angola). Also, in 2015 India initiated the revision of its BIT model.

In January 2020, both countries signed a mutual ACFI, providing a combination of two of the most innovative treaty models developed in recent years. Although the ACFI model has novel features, it maintains clauses similar to BITs such as National Treatment and Most-Favored-Nation Treatment, albeit more limited. This model does not incorporate the ISDS mechanism, since it creates a specific state-state dispute settlement mechanism with several steps for conciliation between the parties before reaching a lawsuit. It incorporates the figures of national focal points and ombudsmen. However, it is not yet clear how this dispute settlement mechanism will work in practice.

It should be clarified that Brazil does not have any BITs in force, since the fourteen that were signed in the early 1990s were not ratified. However, this has not prevented Brazil from being the eleventh largest recipient of Foreign Direct Investment (FDI) in the world in 2022, and the largest in Latin America and the Caribbean. The main investors in Brazil are the Netherlands, the United States, Germany, Spain, the Bahamas and Luxembourg.

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<sup>295</sup> BusinessTech (August 3, 2022). VW launches a new R235 million facility in South Africa. <https://businesstech.co.za/news/motoring/613495/vw-launches-new-r235-million-facility-in-south-africa/>

As for India, in 2016 it terminated fifty-seven of its BITs. It recently denounced the remaining ones, bringing the total to eighty-four BITs.<sup>296</sup> This has not affected India from being the fifth largest recipient of FDI in the world. FDI inflows to India have increased steadily since it rescinded its treaties in 2017 and announced the new model BITs.<sup>297</sup>

### **5.1.4 El Salvador: modification or revocation of the National Investment Law and transparency regarding claims**

In 2009, Canadian mining company Pacific Rim Cayman (acquired in 2013 by the Australian company OceanaGold) sued El Salvador in ICSID for not granting it a permit to operate a gold mine for which it never met the regulatory requirements. This arbitration claim gave rise to a local, national and international campaign that, among other victories, led to the modification of the National Investment Law that had made it possible. This experience offers key lessons that reinforce the importance of publishing the documentation in the context of ongoing arbitration cases, and of having coordination between communities, social organizations, diverse allies and state officials in order to defend sovereignty, territories and natural assets, particularly water.

The struggle was carried out at the local level (municipality of Cabañas),<sup>298</sup> national level (National Roundtable against Metallic Mining)<sup>299</sup> and international level (International Allies against Metal Mining in El Salvador)<sup>300</sup> during the seven years that the arbitration lasted. The effectiveness of this broad coordination contributed to the outcome of the case in favor of the Salvadoran state, and helped clear the way for the population to finally achieve approval of the a law prohibiting all metal mining in March 2017.

In 2013, the Salvadoran government reformed Article 15 of the Investment Law in order to prevent foreign investors from continuing to sue the state via this route.<sup>301</sup> In the case of Pacific Rim Mining, the company originally filed its claim under the terms of CAFTA-DR and El Salvador's Investment Law. Pacific Rim Mining moved a subsidiary from the Cayman Islands to the state of Nevada in the U.S. in order to have recourse to ISDS under

296 Times of India (March 16, 2023). India asks 69 countries to renegotiate bilateral investment pacts. Bilaterals. <https://www.bilaterals.org/?india-asks-68-countries-to>

297 Transnational Institute [TNI] (April 19, 2023). *Public utilities in the spotlight; the impacts of the investment protection regime on the public utilities sector in Latin America and the Caribbean*. <https://www.tni.org/es/publicaci%C3%B3n/servicios-publicos-en-la-mira>

298 See page of the Association for Economic and Social Development of Santa Marta, one of the main local organizations that confronted mining in the country since the beginning of the century: Ades Santa Marta. Facebook. [https://www.facebook.com/adessantamarta1/?locale=es\\_LA](https://www.facebook.com/adessantamarta1/?locale=es_LA)

299 See website of the Mesa Nacional frente a la Minería Metálica. <https://noalamineria.org.sv/>

300 See website of International Allies against Mining in El Salvador. <https://www.stopesmining.org/>

301 See the reform of Article 15 of the Investment Law of El Salvador, in: Decree 243 (July 26, 2013). [https://www.asamblea.gob.sv/sites/default/files/documents/decretos/171117\\_073354285\\_archivo\\_documento\\_legislativo.pdf](https://www.asamblea.gob.sv/sites/default/files/documents/decretos/171117_073354285_archivo_documento_legislativo.pdf)

CAFTA-DR, but the ICSID tribunal refused jurisdiction under this treaty. However, the same arbitration panel allowed the case to proceed under El Salvador's Investment Law.

Another essential element of the success of the struggle in El Salvador was that Salvadoran organizations gained the support of high-level government officials. During the course of the arbitration the Ministry of Economy published the documentation from the arbitration process. This allowed Salvadorans to openly challenge and deny the falsehoods, misrepresentations and distortions made by the company during the process – in particular that the company had never complied with requirements in the mining law to obtain an environmental permit to open a gold mine. There was also significant communication between mobilized communities, civil society organizations and the state's legal defense team, represented by U.S. law firm Foley Hoag.

A host of unexpected alliances were also established, including with the leadership of the Catholic Church, cattle ranchers and the national oligarchy, who sympathized with concerns about the impacts of industrial gold mining on the country's water resources, specifically the Lempa River. An information campaign based on scientific evidence that mining would contaminate the country's water supply contributed to the results of a public survey conducted by the Universidad Centroamericana (UCA) in San Salvador, which showed that 79.5% of the population was against gold mining.

Although the company lost and ultimately had to pay the state's legal and arbitration fees, it was still a costly process with terrible losses. During the period of the arbitration proceedings, four community activists were murdered and many others were threatened. Also, the process to achieve a nationwide ban on metal mining had to be suspended while the lawsuit was ongoing to avoid giving the impression that the Salvadoran government was biased against mining and thereby put the arbitration at risk.

Finally, recognizing the intersection of local concerns and the unjust system of global investment protection was crucial to globalizing the campaign, allowing a confluence of organizations to become involved in a variety of ways. The Salvadoran slogan "Water is worth more than gold", and the focus on defending water over short-term economic gains in a country facing a severe water crisis, resonated in many spheres. As a result, grassroots organizations in the department of Cabañas in the north of the country, diverse organizations and institutions in the capital San Salvador, and many organizations

around the world were able to campaign together. Their fight connected the defense of water, health and territory, as well as the struggle to protect the natural commons, against the imposition of corporate interests through investor-state arbitration in tribunals such as ICSID.

## **5.2 Recommendations for a sovereign future without ISDS**

This report has shown that unrestricted protection of foreign investors has had, and continues to have, very damaging consequences in Honduras. Claims continue to mount. When we began writing at the end of 2023, arbitration claims numbered fourteen; as we close this report in August 2024, claims have climbed to a total of nineteen.

It is urgent that Honduras eliminate the privileges it grants to investors, both in international treaties and in its national laws and contracts with companies. The country's withdrawal from ICSID is an important step; however, it is not enough. Action is important on all fronts: internationally to request the renegotiation of trade and investment treaties, as well as domestically, to push for the reform of the Law for the Promotion and Protection of Investments of 2011. This is not easy, however it is urgent.

The opacity of the investment protection system is indisputable. For this reason, we call on authorities to ensure transparency; the system is based on multiple irregularities contained in contracts signed immediately before (and during) the narco-state. Secrecy must end. For this to happen, all information associated with the contracts and arbitration claims should be made public.

Similarly, it is imperative that all legal actions taken against communities and social organizations for resisting and fighting against extractive projects be stopped, guaranteeing respect for their rights to self-determination and economic, social, cultural and environmental rights. Communities have the right to demand the annulment, cancellation or non-renewal of permits and concessions that threaten their territories and livelihoods.

We propose to the people of Honduras to form a non-partisan national coalition against ISDS, where social movements and other sectors of society can share information, organize, and defend their communities from current and future suits. This coalition could gain support from global networks composed of international organizations that

also seek to stop ISDS and that would support the Honduran struggle against corporate impunity. There are many of us fighting on a global scale against this system of corporate privilege.

A national coalition against the demands and power of transnational corporations is possible and necessary. Here we have shown that other countries have already done so. El Salvador's victories in this regard provide important lessons, not only in Central America, but on a global level. There are multiple victories to share and celebrate. Honduran organizations can add another milestone on the road to dismantling this unjust system that only benefits transnational investors.

To Honduran governments current and future, we say: we are attentive. Action is urgent. It requires a suite of public policies that head in the direction of greater sovereignty – rather than continuing to give control of the country to private interests. Therefore, we recommend:

- Do not sign new FTAs, BITs or contracts with investment protection clauses. On the contrary, give primacy to international human rights, indigenous, environmental and labor treaties.
- Terminate existing BITs that contain the ISDS mechanism. Exiting treaties is not only possible, it is imperative if a government's objective is to implement development plans that respect human, indigenous, labor and environmental rights.
- Begin the urgent process of reforming the 2011 Law for the Promotion and Protection of Investments.
- Ensure transparency of information about ongoing arbitration suits against Honduras, which would allow for the democratization of knowledge about the suits and enable the participation of affected populations and organizations.
- Make public all contracts with foreign and domestic investors, and have them cancelled or renegotiated as a matter of urgency, given that many of them were signed based on multiple irregularities.
- Strengthen national justice systems for the resolution of investor-State disputes. A national judicial system already exists: that is where investors should resolve their disputes with the State, not in international arbitration.

- Conduct a comprehensive citizen audit of all legal instruments containing investment protection and arbitration claims that takes into account their economic, social and environmental impacts.
- Promote the active participation of the populations affected by projects involving foreign companies in such an audit, in accordance with their collective rights to self-determination, monitoring and evaluation of their own development.
- Suspend the possibility for investors to ISDS for the duration of the audit, and follow the recommendations of the audit once it is concluded.
- Demand from counterparts the exclusion of ISDS from free trade agreements with investment protection, and the substantive reduction of the rights of investors included in the investment chapters of such treaties, particularly CAFTA-DR.
- Actively support the creation of a Binding Treaty on Transnational Corporations and Human Rights being discussed at the United Nations, and combat the impunity of transnational corporations in regards to economic, social, cultural and environmental rights.

## Investor-state arbitration claims against Honduras

Claimant(s)	Year the case was initiated	Investor country of origin	Treaty invoked	Administering institution	Case number	Result of the claim	Total amount claimed by the investor	Amount granted to the investor	Economic sector
<b>Treaty-based claims</b>									
X-Elio Energy S.L.	2024	Spain	Honduras-Spain BIT	ICSID	ICSID Case No. ARB/24/31	Pending	No Information		Electricity, gas, steam and air conditioning supply
Víctor Miguel Silhy Zacarías	2024	El Salvador	CAFTA-DR	ICSID	ICSID Case No. ARB/24/32	Pending	No Information		Electricity, gas, steam and air conditioning supply
Eléctricas de Medellín Ingeniería y Servicios S.A.S.	2024	Colombia	FTA between Colombia, El Salvador, Guatemala and Honduras	ICSID	ICSID Case No. ARB/24/24	Pending	US\$500 million		Electricity, gas, steam and air conditioning supply
Fernando Paiz Andrade y Anabella Schloesser de León de Paiz	2023	Guate-mala	CAFTA-DR	ICSID	ICSID Case No. ARB/23/43	Pending	US\$160 million		Electricity, gas, steam and air conditioning supply
Inversiones y Desarrollos Energéticos, S.A.	2023	Panama	FTA between Panama and Central America	ICSID	ICSID Case No. ARB/23/40	Pending	US\$200 million		Electricity, gas, steam and air conditioning supply
Juan Carlos Argüello and Ernesto Argüello	2023	USA	CAFTA-DR	ICSID	ICSID Case No. ARB/23/17	Pending	US\$100 million + US\$2 million for moral damages		Construction
JLL Capital, S.A.P.I. de C.V.	2023	Mexico	FTA between Mexico, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua	ICSID	ICSID Case No. ARB/23/3	Pending	US\$380 million		Financial and insurance activities

Claimant(s)	Year the case was initiated	Investor country of origin	Treaty invoked	Administering institution	Case number	Result of the claim	Total amount claimed by the investor	Amount granted to the investor	Economic sector
Honduras Próspera Inc., St. John's Bay Development Company LLC, and Próspera Arbitration Center LLC.	2023	USA	CAFTA-DR; Agreement for Legal Stability and Investor Protection	ICSID	ICSID Case No. ARB/23/2	Pending	US\$10.775 billion		Real estate activities
Inversiones Continental (Panamá), S.A.	2018	Panama	FTA between Panama and Central America	ICSID	ICSID Case No. ARB/18/40	Pending	US\$1 billion		Financial and insurance activities
Gabourel Family Trust	2017	USA	Honduras-USA BIT	N/A	n/d	Discontinued. Agreement between parties	US\$251.8 million	No Information	Construction

### Claims based in contracts and the Investment Law of 2011

Operadora Portuaria Centroamericana, S.A. de C.V.	2024	Honduras	Contract	ICSID	ICSID Case No. ARB/24/33	Pending	No Information		Transportation
International Container Terminal Services Inc.	2024	Philippines	Law for the Promotion and Protection of Investments	ICSID	ICSID Case No. ARB/24/34	Pending	No Information		Transportation
Palmerola International Airport, S.A. de C.V.	2023	Honduras	Contract	ICSID	ICSID Case No. ARB/23/42	Pending	US\$10 million		Transportation
Norfund and KLP Norfund Investments AS	2023	Norway	Law for the Promotion and Protection of Investments	ICSID	ICSID Case No. ARB/23/13	Pending	US\$200 million		Electricity, gas, steam and air-conditioning supply

Claimant(s)	Year the case was initiated	Investor country of origin	Treaty invoked	Administering institution	Case number	Result of the claim	Total amount claimed by the investor	Amount granted to the investor	Economic sector
Scatec ASA	2023	Norway	Law for the Promotion and Protection of Investments	ICSID	ICSID Case No. ARB/23/12	Pending	US\$200 million		Electricity, gas, steam and air-conditioning supply
Autopistas del Atlántico, S.A. de C.V. y otros	2023	USA	Contract	ICSID	ICSID Case No. ARB/23/10	Pending	US\$179.4 million		Transportation
Elsamex, S.A.	2009	Spain	Contract	ICSID	ICSID Case No. ARB/09/4	Decided in favor of the investor	US\$11.5 million	US\$8.1 million	Transportation
Astaldi S.p.A.	2007	Italy	Contract	ICSID	ICSID Case No. ARB/07/32	Decided in favor of the investor	US\$5.57 million	US\$5.3 million	Transportation
Astaldi S.p.A. and Columbus Latinoamericana de Construcciones S.A.	1999	Italy	Contract	ICSID	ICSID Case No. ARB/99/8	Decided in favor of the investor	No Information	No Information	Transportation

## List of acronyms

<b>ACFI</b>	Investment Cooperation and Facilitation Agreements (Acuerdos de Cooperación y Facilitación de Inversiones)
<b>Agrecasa</b>	Agregados del Caribe S. de R.L. de C.V.
<b>ALOP</b>	Latin American Association of Development Organizations (Asociación Latinoamericana de Organizaciones de Promoción de Desarrollo)
<b>PPP</b>	Public-Private Partnership
<b>ARCAH</b>	Alternatives for Community and Environmental Revindication of Honduras (Alternativa de Reivindicación Comunitaria y Ambientalista de Honduras)
<b>ASJ</b>	Partnership for a More Just Society (Asociación para una Sociedad más Justa)
<b>ATIC</b>	Criminal Investigation Technical Agency (Agencia Técnica de Investigación Criminal)
<b>BIT</b>	Bilateral Investment Treaty
<b>CAD</b>	Central America for Dialogue (Centroamérica para el Diálogo)
<b>CAFTA-DR</b>	Free Trade Agreement between the United States, Central America and Dominican Republic
<b>CAITISA</b>	Comprehensive Audit Commission on Investment Treaties and the Ecuadorian Arbitration System (Comisión de Auditoría Integral sobre los Tratados de Inversión y el Sistema de Arbitraje de Ecuador)
<b>CAMP</b>	Committee for the Adoption of Best Practices (Comité para la Adopción de Mejores Prácticas)
<b>CESPAD</b>	Center for the Study of Democracy (Centro de Estudios para la Democracia)
<b>CHAAC</b>	Honduran Coalition for Citizen Action (Coalición Hondureña de Acción Ciudadana)
<b>CID</b>	Mesoamerican Initiative on Trade, Integration and Sustainable Development (Iniciativa Mesoamericana de Comercio, Integración y Desarrollo Sostenible)
<b>CNA</b>	National Anti-Corruption Council (Consejo Nacional Anticorrupción)

<b>CNRP</b>	National Coordinating Committee of Popular Resistance (Coordinadora Nacional de Resistencia Popular)
<b>COALIANZA</b>	Commission for the Promotion of Public-Private Partnerships (Comisión para la Promoción de la Alianza Público-Privada)
<b>COHEP</b>	Honduran Private Enterprise Council (Consejo Hondureño de la Empresa Privada)
<b>COPINH</b>	Civic Council of Popular and Indigenous Organizations of Honduras (Consejo Cívico de Organizaciones Populares e Indígenas de Honduras)
<b>EEH</b>	Honduras Energy Company (Empresa Energía Honduras)
<b>ENEE</b>	National Electric Energy Company (Empresa Nacional de Energía Eléctrica)
<b>ERIC-SJ</b>	Reflection, Research and Communication Team-Companionship of Jesus (Equipo de Reflexión, Investigación y Comunicación-Compañía de Jesús)
<b>EU</b>	European Union
<b>FETCCOP</b>	Special Prosecutor's Office for Transparency and Combating Public Corruption (Fiscalía Especial para la Transparencia y Combate a la Corrupción Pública)
<b>FDI</b>	Foreign Direct Investment
<b>FNRP</b>	National Front of Popular Resistance (Frente Nacional de Resistencia Popular)
<b>FTA</b>	Free Trade Agreement
<b>IACHR</b>	Inter-American Commission of Human Rights
<b>ICSID</b>	International Centre for Settlement of Investment Disputes
<b>IDB</b>	Inter-American Development Bank
<b>IFC</b>	International Finance Corporation
<b>IMAG</b>	Guaranteed Minimum Annual Income (Ingresos Mínimos Anuales Garantizados)
<b>IMF</b>	International Monetary Fund
<b>INE</b>	National Statistics Institute (Instituto Nacional de Estadística)

<b>Inhgeomin</b>	Honduran Institute of Geology and Mining (Instituto Hondureño de Geología y Minería)
<b>INPREMA</b>	National Teachers' Welfare Institute (Instituto Nacional de Previsión del Magisterio)
<b>ISDS</b>	Investor-State Dispute Settlement
<b>LIBRE</b>	Freedom and Refoundation Party (Partido Libertad y Refundación)
<b>MIGA</b>	Multilateral Investment Guarantee Agency
<b>NAFTA</b>	North American Free Trade Agreement
<b>NGO</b>	Non-governmental organization
<b>OABI</b>	Office for the Administration of Seized Assets (Oficina Administradora de Bienes Incautados)
<b>OAS</b>	Organization of American States
<b>OFAC</b>	Office of Foreign Assets Control
<b>OFRANEH</b>	Black Fraternal Organization of Honduras (Organización Fraternal Negra de Honduras)
<b>PEMSA</b>	Mesoamerica Power and Energy S.A. (Potencia y Energía de Mesoamérica S.A.)
<b>PGR</b>	Attorney General's Office (Procuraduría General de la República)
<b>PIA</b>	Palmerola International Airport
<b>RADDH</b>	Network of Women Human Rights Defense Lawyers (Red de Abogadas Defensoras de Derechos Humanos)
<b>RED</b>	Special Development Regions (Regiones Especiales de Desarrollo)
<b>SAN</b>	National Airport Service (Servicio Aeroportuario Nacional)
<b>SERNA</b>	Ministry of Energy, Natural Resources, Environment and Mines (Secretaría de Energía, Recursos Naturales, Ambiente y Minas)
<b>STENEE</b>	ENEE Workers Union (Sindicato de Trabajadores del ENEE)
<b>UFERCO</b>	Specialized Prosecutorial Unit against Corruption Networks

<b>UN</b>	United Nations
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UPOV</b>	International Convention for the Protection of New Varieties of Plants
<b>WB</b>	World Bank
<b>ZEDE</b>	Employment and Economic Development Zone (Zona de Empleo y Desarrollo Económico)